87-252

Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

GEORGE W. HAMILTON, ET AL.,
Petitioners,

VS.

MORRIS COUNTY, TEXAS, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DONALD W. HICKS, SR.
DONALD W. HILL

HILL HICKS COLLINS
Attorneys and Counselors at Law
ONE MAIN PLACE, Suite 1530
Dallas, Texas 75250
(214) 744-0255

Attorneys for Petitioners

June 9, 1987

QUESTIONS PRESENTED

A.

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING SUMMARY JUDGMENT ON THE PLEADINGS BASED ON THE FACT THAT PETITIONERS HAD NOT SHOWN RACE TO BE A FACTOR IN THE CASE.

B.

WHETHER THE TRIAL COURT'S TAKING JUDICIAL NOTICE THAT THE PROPERTY IN DISPUTE WAS WITHIN TITUS COUNTY, TEXAS WAS CLEARLY ERRONEOUS AND SUPPLIED A CRUCIAL AND MATERIAL, CONTROVERSIAL FACT TO SUPPORT THE GRANTING OF RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT.

C.

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING PETITIONERS' MOTION FOR RELIEF FROM JUDGMENT AND, IN THE ALTERNATIVE, IN NOT CONSTRUING THE MOTION AS A MOTION FOR NEW TRIAL IN ORDER TO DO JUSTICE.

D.

WHETHER PETITIONERS' PLEADINGS STATED A PRIMA FACIE CASE UNDER 42 U.S.C. § 1983.

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

GEORGE W. HAMILTON, ET AL.,
Petitioners,

VS.

MORRIS COUNTY, TEXAS, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Your Petitioners[1/] respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit and filed in

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1/ Petitioners:

George W. Hamilton died intestate during the litigation below on February 18, 1986. Mr. Hamilton's wife attempted to secure letters of administration to further prosecute this civil action but was refused issuance of same by Respondent Morris County. Mr. Hamilton's daughter, Sharon Hamilton and

the above cause on February 11, 1987, affirming the following three (3) actions by the United States District Court for the Eastern District of Texas (Marshall Division, Parker, J.), viz.:

1/ (Cont'd):

Petitioner Bettie Hamilton are prosecuting this case on behalf of the Estate of George W. Hamilton and as heirs of that Estate. Prior to his death, George W. Hamilton was issued letters of administration of the Estate of Pearl Hamilton, Deceased, by a Morris County Probate Court. Pearl was George's mother and she died intestate. Mr. Warren Harding Hamilton, George's brother, sought to substitute himself as successor administrator but was denied that privilege due to this civil action. Petitioner Warren Harding Hamilton and his sister, Petitioner Varine Hamilton make this application for Writ of Certiorari individually and as representatives of the Estate of Pearl Hamilton, Deceased.

Respondents:

Respondents are Morris County, Texas; Titus County, Texas; Morris County Appraisal District; Titus County Appraisal District; Pat Beck, individually and as former Titus County, Texas Assessor-Collector; Jerry Chambliss, individually and as Morris County, Texas Assessor Collector; and B. W. Skipper, individually and as Chief Appraiser, Morris County, Texas. Since this litigation, B. W. Skipper has moved over to become Deputy Assessor Collector for Titus County, Texas.

(1) Oral Summary Judgment granted May 9, 1986 against Petitioners;

(2) Written Order entered September 4, 1986, NUNC PRO TUNC: May 9, 1986, granting Summary Judgment against Petitioners; and

(3) Written Order entered June 17, 1986, denying Petitioners Motion for Relief from Summary Judgment.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit was entered and filed February 11, 1987, and was unreported. A copy of the opinion is included in Appendix A, together with copies of the denial of Petitioners' timely request for panel rehearing entered March 10, 1987 and filed March 24, 1987, the transcript of the District Court's Summary Judgment rendered May 9, 1986, and the Order entered

September 4, 1986, NUNC PRO TUNC: May 9, 1986.

GROUNDS FOR JURISDICTION

The Judgment sought to be reviewed was eof red by the United States CourtAppeals for the Fifth Circuit on February 11, 1987, affirming the District Court's judgment in all respects. On February 25, 1987, Petitioners (Appellants) petitioned the Fifth Circuit for Panel Rehearing. The Fifth Circuit's denial of that Petition for Rehearing was entered on March 10, 1987 and filed March 24, 1987. This Petition for Certiorari was filed within ninety days of March 24, 1987. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS INVOLVED

28 U.S.C. § 1254(1) 28 U.S.C. § 2101(c)

28 U.S.C. § 1291, 28 U.S.C. § 1343(a)(4)

Fed. R. Civ. Proc. Rules 59(b) and 60(b)

United States Constitution, 13th, 14th and 15th Amendments

Supreme Court Rules 20.2. - 20.4.

STATEMENT OF THE CASE

On August 13, 1985, Petitioners filed an Original Complaint and demand for jury trial in the Eastern District of Texas (Marshall Division). (**Record on Appeal**, Vol. 1, pp. 1-12, 175-86). In that complaint, Plaintiff alleged, inter alia, a cause of action under 42 U.S.C. § 1983 to redress the deprivation under color of State statute, ordinance, regulation, custom or usage of the rights, privileges, and immunities enjoyed by the white resident land owners/taxpayers of Morris County, Texas, and secured by the due process and equal protection clauses of the 14th Amendment. Further, Petitioners alleged that their inability to enjoy said privileges and immunities associated with land ownership, under the facts and circumstances,

were incidents and badges of slavery under the 13th Amendment, and that Petitioners' associational interests under the 14th Amendment as well as the ability to politic, vote and operate as Morris County citizens in the largest Black voting precinct (#102) were abridged by Respondents based on Petitioners' race, Black. Over the past 14 years, Petitioners attemtped to resist Respondents' race conscious actions by tendering the following list of considerations to prove Morris County as the situs of their land yet, Petitioners had no relief from the unequal burdens placed on them by Respondents: (1) the recorded, historic deeds and other muniments of title clearly describe Petitioners land located in Morris County, Texas **(Supplemental Record on Appeal, Exhibits 1 and 10)**; (2) all title opinions, private, federal, and state show Petitioners' property in Morris County **(Supplemental Record on**

Appeal, Exhibits 8 and HH); (3) all "legitimate" deeds and muniments of title are and have been recorded in Morris County since 1875 **(Supplemental Record on Appeal, Exhibits A and B)**; (4) every prior owner of Petitioners' property (back to the man after which their community is named, "Cason") has been a citizen of Morris County enjoying the privileges and immunities associated therewith **(Supplemental Record on Appeal, Exhibits 1-4)**; (5) all "official and recorded" Acts of the State of Texas, Counties of Morris and Titus, as well as Attorney General opinions going back to 1875 and 1891, establish and recognize the officially authorized on-the-ground survey of the Morris/Titus County common boundary in Cason, Texas, as claimed by Petitioners **(Supplemental Record on Appeal, Exhibits A-F and FF)**; (6) the location of Morris and Titus Counties' facilities relative to the theories

advanced by the parties prove Petitioners to be Morris County citizens **(See Supplemental Record on Appeal, Exhibits A-D (affidavits of other Cason, Texas residents))**. According to Respondents' Exhibit "4" **(the plat referred to in Exhibits A-D of Supplemental Record on Appeal)**, Morris County has voting facilities in Titus County. During this proceeding the Morris County sheriff, who is also the Respondent Morris County tax appraiser's brother, gave written notice to Petitioners for Morris County jury service **(Supplemental Record on Appeal, Exhibit 22)**; (7) Petitioners voted **(Supplemental Record of Appeal, Exhibits 1-4)** served on juries, ran for office, served in appointed (first black on Dangerfield ISD School Board) elected, and volunteer capacities in Morris County; (8) all whites although within the same subject area escaped the boundary interpretations of Morris and Titus Counties leaving only the

Black citizens to bear the burden of those very young interpretations. The Defendants' expert surveyor "calculated" the disputed common boundary upon request in December of 1984, during state court litigation involving the situs; (9) loan transactions secured by Petitioners' property recognize Morris County as its situs - even those transactions originating in Titus County **and a federal title opinion**; (10) since 1875, all tax payments relative to the subject property have been made to Morris County (**Supplemental Record on Appeal, Chambliss Deposition Exhibit 1**); and (11) other clear and obvious facts recited below. Petitioners complained that their inability to resolve the ostensibly simple situs dispute after 12 years was based on Petitioners' race and/or previous condition of servitude. Petitioners further complained that Respondents refusal to follow due course or due process of law relative to

Petitioners' property rights based on Petitioners' race and lack of presence in any area of county government violated the 14th Amendment. Petitioners' claim was that, under the state laws or customs, the tax and appraisal officials (each who had known each other and some who were raised up with George Hamilton) of Morris and Titus Counties conspired to unlawfully alter the shape of the historic official common natural boundary (Shady Grove Road) dividing said Counties. Petitioners claimed that removal from Morris County of all or substantially all Black taxpayers/voters in the small Cason, Texas Community while white taxpayers/voters continued as Morris County residents, constituted a discrimination against Petitioners and their class in violation of the due process and equal protection clauses of the 14th Amendment. Petitioners' leader in this litigation, George Hamilton, deceased, was a

Black elected person palatable to both Whites and Blacks in Morris County so that taking him and his support out of the Morris County Precinct having the largest Black population, especially at his age of 56 years, would have a dismantling impact on his political involvement and the voting strength as far as both Morris and Titus Counties were concerned. Petitioners complained that Morris County Appellees protected the white citizenry from these unconstitutional intrusions thus providing that group special privileges, immunities, and status based on their race which is fairly and adequately represented in county government. Petitioners asserted that Blacks of Morris County have been taxed but not represented.

Petitioners claimed that Respondents' racially selective use of the recently calculated common boundary denied Petitioners their pre-existing right to vote in Morris

County and deprived them of their right to own, hold or inherit land in Morris County, Texas, in violation of the 14th and 15th Amendments. (**Record on Appeal**, Vol. 1, pp. 70-71). Finally, Petitioners assert that once they conscientiously and legally chose to (1) physically associate with Morris County, Texas, (2) vote and pay taxes in that political subdivision, (3) participate politically with that political subdivision, (4) express themselves by, inter alia, serving the community and raising a family within that political subdivision, and (5) develope specific and general social, economic, and political associations with others in that political subdivision, Petitioners established legitimate free speech and associational interests that are protected by the 14th Amendment and voting rights protected by the 15th Amendment, whether specifically alleged or not.

(i) **Counsel's Diligence**

The Courts below attempt to use Counsel's failure to timely respond to Respondents' Motions for Summary Judgment to explain their sanctioning of Respondents' egregious civil rights violations and fraud. The following clearly shows that Counsel was not so untimely, as to warrant the District Court's active participation in denying Petitioners their day in Court to address the wrongs complained of.

On October 7, 1985, and after Petitioners failed in their attempts at securing agreed oral deposition scheduling from Respondents, Petitioners noticed Respondents for deposition on November 1, 1985. (**Record on Appeal**, Vol. 1, pp. 156-57). On December 13, 1985, the Trial Court entered a **written Notice** setting a status conference for January 10, 1986. (**Record on Appeal**, Vol. 1, Exhibit "B", p. 33; Vol.

2, p. 4, ll. 25; p. 5, ll. 1-3). Due to Respondents schedules, said depositions were by agreement postponed until after the new year, and on January 22, 1986, Petitioners served notice pursuant to that agreement that Respondents depositions would be taken February 13, 1986. (**Record on Appeal**, Vol. 1, pp. 151-52). Around January 22, 1986, George Washington Hamilton and Petitioners Betty L. Hamilton and Varine Hamilton were noticed to give their depositions beginning February 14, 1986.

On January 23, 1986, by order of and for the Court, the District Clerk's office issued a Scheduling Order providing: (1) for a final pre-trial conference to be scheduled after April 15, 1986, and (2) that the case would be placed on the Ready for Trial List on the same date of the final pre-trial conference to be determined. (**Record on Appeal**, Vol. 1, pp. 147-48). (**Record on Appeal**,

Vol. 1, p. 23, ¶ D.). The parties were only able to complete five depositions between February 13 and 14, 1986, and George Washington Hamilton, Petitioners' leader in this conflict, was the main object of Respondents' interrogations having rendered a substantial deposition with substantial and material exhibits during those two days. The parties agreed to reschedule Petitioner Bettye Hamilton (George's wife). (**Record on Appeal**, p. 24, ¶ E.).

George Washington Hamilton died four days after his last deposition testimony of February 14, 1986. (**Record on Appeal**, Vol. 1, p. 24, ¶ F.). Fifty-two (52) days later, on or about April 3, 1986, Petitioners received all the depositions taken February 13 and 14, 1986. (**Record on Appeal**, Vol. 1, p. 24, ¶ G.).

Prior to George Washington Hamilton's death, he secured letters of administration

over Petitioner Estate of Pearl Hamilton, Deceased, from the Morris County Judge in Probate, Honorable Ronald Cowan. On April 4, 1986, George Washington Hamilton's widow, Petitioner Betty L. Hamilton, attempted to seek letters of administration for his estate in Morris County, Texas, at which time the Morris County Judge Cowan refused to assume Probate jurisdiction based on the litigating theories adopted by Respondent Counties. (**Record on Appeal**, Vol. 1, p. 24, ¶ H.). Similarly, George Washington Hamilton's brother, Petitioner Warren Hardin Hamilton, was unsuccessful in merely attempting to succeed George Washington Hamilton as administrator over the Estate of Pearl Hamilton, Deceased, due to the Morris County judge's refusal to qualify him during the pendency of this civil action, and even though George Washington Hamilton had received Letters of Administration from Morris County and said

estate was being administered in Morris County. (**Record on Appeal**, Vol. 1, p. 24, ¶ H.)

On March 12, 1986, Titus County Respondents filed a Motion for Leave to Amend their Original Answer which motion was granted and said Answer filed March 18, 1986. (**Record on Appeal**, Vol. 1, pp. 141-43, 133, and 128-32, respectively). On March 12, 1986, Petitioners had not received their February 13 and 14 depositions. (**Record on Appeal**, Vol. 1, p. 24, ¶ G.)

On March 17, 1986, Morris County Respondents filed a Motion for Leave to Amend their Original Answer which motion was granted and said Answer filed April 21 and April 22, 1986, respectively. (**Record on Appeal**, Vol. 1, pp. 134, 56, and 51-55, respectively). (**Record on Appeal**, Vol. 1, p. 24, ¶ G.)

On April 4, 1986, by agreement of the

parties, Petitioner Betty L. Hamilton was deposed, which deposition was not received by Petitioners' counsel until well after May 27, 1986. (**Record on Appeal**, Vol. 1, pp. 22; 24-25, ¶ I.). On that same date (April 4, 1986), the Morris County Respondents filed their Motion for Summary Judgment. (**Record on Appeal**, Vol. 1, pp. 74-80.) On April 14, 1986, the Titus County Respondents filed a Motion for Leave to File Summary Judgment Motion and Brief, which motion was granted April 21, 1986 and the Titus County Respondents' Motion for Summary Judgment was filed April 22, 1986. (**Record on Appeal**, Vol. 1, pp. 72-73; 69; 57-67).

On April 15, 1986, Petitioners' requested a 90 day continuance to complete discovery and to amend their complaint to reflect pre-death discovery, new theories of recovery and to add and substitute parties. Prior to that request, Petitioners' counsel

conferenced with opposing counsel who had no objections to Petitioners' need or request for continuance. (**Record on Appeal**, Vol. 1, pp. 70-71).

On or about May 2, 1986, the Trial Court's Clerk, Mr. Price, telephoned Petitioners' counsel concerning a conference to be held the week of May 5, 1986. Mr. Price was informed that Petitioners' counsel could make the conference the week of May 12, 1986, but that he would have to try and reschedule for the week of May 9, 1986. The Clerk stated that counsel would have to be at said conference and that Clerk would not state the purpose of same.

Based on Petitioners' Counsel's schedule, the recent death of George Washington Hamilton and his family's (Petitioners') emotional state, the yet to be received April 4, 1986 crucial deposition testimony and exhibits of Petitioner Betty L. Hamilton, newly

discovered fraud in the submission of deposition testimony and surveying documents and positions by said Counties and a magnificent conspiracy by Respondents to unlawfully excise and disassociate Petitioners from Morris County where they had pre-existing rights to vote, run for office, etc., anticipated doctors' depositions and/or affidavits, the subsequent need to prepare Petitioner Betty L. Hamilton or others as the lead Plaintiff(s) and the discovery of material documents, notes, diaries, etc., that were being prepared for submission by George Washington Hamilton pursuant to discovery requests prior to his death, Petitioners' counsel could not have been prepared to effectively argue or respond to Respondents' Motions for Summary Judgment. **This is why the Motion to Continue was timely requested.** (**Record on Appeal**, Vol. 1, pp. 25-6, ¶ L.; Vol. 2, p. 3, ll. 10-15). The Court failed

or refused to grant or even rule on Petitioners' Motion to Continue.

On May 9, 1986, Petitioners' counsel experienced verifiable and total brake failure on the way to the conference that caused him to telephone and inform the Trial Court that Counsel would be late. It was at this time Petitioners' counsel was informed that some sort of hearing would occur. (**Record on Appeal**, Vol. 2, p. 3, ll. 10-15). Further, it was made clear that counsel's presence was insignificant in that the Court was going to rule in Respondents favor on their Motions for Summary Judgment in that the Court felt that Petitioners had enough time to respond to all motions and to complete discovery notwithstanding the 12 year history of this case, the parties' comparative access to resources, witnesses, or materials relevant to disposition, George Washington Hamilton's death, lack of crucial

deposition testimony, and the Petitioners' reasonable, seasonable and timely requests for a 90 day continuance to complete discovery and amend their complaint to allege a cause or additional causes of action. Again, the opposing counsel did not object. (**Record on Appeal**, Vol. 1, p. 26, ¶'s L. & M.; Vol. 2, p. 3, ll. 14-25).

On May 14, 1986, (five days after the Court orally rendered Summary Judgment against Petitioners) Petitioners filed a Motion for Leave to Respond Out of Time to Respondents' Motions for Summary Judgment and submitted said Response and exhibits. The response was material and substantial and, if reviewed, should have caused a fair and open-minded court to set aside the May 9, 1986, Summary Judgment in the nature of a default. (**Record on Appeal**, Vol. 1, pp. 48-50; page 3 of Civil Docket Continuation Sheet.) The District Court, however, refused or failed to

rule on Petitioners Motion. The effect of that failure or refusal was to bar review of the Response and exhibits which would prove Petitioners' claims and which items will leave this Court with a definite and firm conviction that what has happened here is worse than a mistake - it is tragic.

Therefore, on May 27, 1986, Petitioners, in an attempt to get their evidence on the record and obtain relief from the default Summary Judgment Proceeding, filed a pleading titled Motion for Relief from Judgment with exhibits "A" through "I". Again, another Motion by Petitioners was denied. This time, the Court entered a written order of denial without argument June 17, 1986. (Record on Appeal, Vol. 1, pp. 14, 22-47; respectively). Said Motion for Relief incorporated for all purposes Petitioners' Response to Respondents' Motions for Summary Judgment and exhibits to said Response. (Record on

Appeal, Vol. 1, p. 26, ¶ N; **Supplemental Record on Appeal** (Original Exhibits). Again, Petitioners' Counsel was trying to get the District Court to review Petitioners evidence and do the right thing, except that the Court was committed to the course of denying Petitioners a fair and adequate opportunity to develope and vent their substantial civil rights action.

On July 9, 1986, Petitioners filed their Notices of Appeal relative to the Orders Denying Motion for Relief from Summary Judgment entered in writing June 17, 1986 and Granting Motion for Summary Judgment orally entered May 9, 1986. (**Record on Appeal**, Vol. 1, pp. 1-4; Vol. 2.).

Four months later, on September 4, 1986, the Trial Court sua sponte entered its written Order Granting Summary Judgment NUNC PRO TUNC: May 9, 1986. (2nd **Supplemental Record on Appeal**).

On **August 4, 1986**, the transcript of the May 9, 1986 Summary Judgment hearing was filed. **No evidence (including affidavits) was presented to rebut Petitioners' complaint. (Record on Appeal**, Vol. 2).

On September 15, 1986, Petitioners filed their Notice of Appeal from that September 4, Order. (NOTE: On October 23, 1986, Petitioners requested the District Clerk to make a 3rd Supplement to the record on appeal making the September 15, 1986, Notice of Appeal a part of that record.).

On October 23, 1986, Petitioners requested that the District Clerk further supplement the **Record on Appeal** with the following crucial depositions: George Washington Hamilton, R. G. Dougherty, Pat Beck, B. W. Skipper, Jerry Chambliss, and Bettie L. Hamilton. None of these depositions were used or introduced into the record at the May 9, 1986, hearing.

On February 11, 1987, Fifth Circuit Court of Appeals Justice Edith Jones, writing for the Fifth Circuit panel affirmed the District Court's treatment of your Petitioners. On February 25, 1987, Petitioners timely filed for Panel rehearing which petition was denied. The order of denial was entered March 10, 1987.

(ii) **Statement of Facts**

On September 22, 1956, George Washington Hamilton and his wife purchased the property in question from his mother, Pearl Hamilton who had purchased it on August 15, 1946, from John Cason's daughter, Mary John Ellis. Each of those conveyances recognized the "formally" established Morris and Titus County common boundary in Cason as being Shady Grove Road, and the subject property's situs in Morris County, Texas. Since 1946, the subject property has been located in Morris County, Texas, by the Federal govern-

ment in a FHA title opinion and every conveyance document and other muniments of title have recognized the "formally" established common boundary between Morris and Titus Counties, which recognition is consistent with the Hamiltons' citizenship functions. Absolutely no evidence exists on the record to show taxes relative to said property were ever paid in any County other than Morris since 1875. (**Record on Appeal**, Vol. 1, 177-180 (Original Complaint); **Supplemental Record on Appeal**, pp. 23-26, ¶'s 26.a, 26.c, 26.d, 26.e. (the Hamiltons, were included), 26.f., 26.g, 26.h, 26.i, 28, and 32, George Washington Hamilton's Deposition Testimony (pp. 256-257, 262-300); (Documents in support of George Hamilton's Deposition) Exhibits "1" through "22"; p. 8, ¶ 7; Pat Beck's Deposition Testimony (p. 14), Trial Exhibits "FF" and "HH".

Prior to this suit, no proceedings

leading to a relocation of the common boundary line in the Carson community from Shady Grove Road to the points reflected in Respondents (Appellees-Defendants) Exhibit "4" were had by the Commissioners Court of either of the Counties. From the time the common boundary line was established in 1875, Shady Grove Road (known as County Road for Titus County purposes) had been "recognized" and "treated as a true, natural boundary line" by both Counties (**Supplemental Record on Appeal**, pp. 19-20, ¶ 2,3,4,5,6,7,9,10,11,12,13,14,22, and 25; George Hamilton's Deposition Testimony (pp. 22-23, 28, 33-34, 39-46, 71-75, 152, 158-59, 162, 165, 167, 169-173, 192-193, 200, 203, 213, 215-217, 231-235, 249); **Supplemental Record on Appeal**, pp. 29-31, ¶'s A, B, C, D, E, and F; General Land Office Exhibits A, B, C, D, E & F)). See Appendixes H, I, J, K, O, P, S and W. The Commissioners Court of each

of the Counties officially acted in reference to the 1875 established line by establishing justice precincts, commissioners' and voting precincts, in laying out roads and providing county services. Even today each county separately exercises jurisdiction up to the full limits of the Shady Grove/County Line common boundary. Votes cast by residents living in the same area of the small Cason Community were returned and counted by the Morris County Officers. All residents of the Cason Community vote at Morris County Precinct #102. During this proceeding, Petitioner Bettye Hamilton received notice to serve jury duty in Morris County. (See **Supplemental Record on Appeal**, pp. 23-24, ¶'s 26.a. and 26.c. through 26.i., George Hamilton's Deposition Testimony (pp. 257-258, 262, 264-265); Documents Submitted in Support and as Exhibits to the Deposition of George Hamilton, Exhibits "1" through

"22"; **Trial Exhibits "AA" through "EE". Supplemental Record on Appeal**, p. 26, ¶'s 1,2,5, and 6; Deposition Testimony of Bettie L. Hamilton (Exhibits "A", "B", "C" & "D"); **Supplemental Record on Appeal**, (Affidavit of Bettie L. Hamilton, p. 33, ¶'s 2,6,7,8,9,10,11, and 12).

After over 16 years as Titus County Tax Assessor-Collector, Respondent Pat Beck was unfamiliar with dividing markers between the Counties, however, Respondent Beck admitted in deposition testimony that neither Morris County nor Titus County have re-established their common boundary lines in the Cason Community. Respondent Beck admitted that Titus County does not have the authority and should not attempt to tax property not within its jurisdiction. Respondent Beck also admitted that "no agreements exist that would allow Titus County to tax property outside established

Titus County boundaries" and that Petitioners cannot be expected to pay taxes in two counties. (**Supplemental Record on Appeal**, p. 9, ¶'s 12 and 13; p. 10, ¶ 20; p. 11, ¶'s 23 and 24, Deposition Testimony of Pat Beck (pp. 40, 44, 49-50, 54, 56, 71). Further, Respondent Beck admits that no valid reason exists for Respondent Titus County taxing the Hamiltons and not taxing all taxpayers similarly situated and that the Hamiltons' "situation was unique". (**Supplemental Record on Appeal**, p. 11, ¶ 22, Deposition Testimony of Pat Beck (pp.56-57, 68-71); Trial Exhibits "GG" and "II").

The "unique situation" is clear when, for example, the location of others in the Cason Community are examined in reference to Respondents' Exhibit "4". Respondents' expert surveyor during the trial Court proceeding, R. G. Dougherty claimed under oath that Exhibit 4 was a true, correct, accurate,

and exact depiction of the County line between Morris and Titus Counties. (**Supplemental Record on Appeal**, p. 6, ¶'s 13 and 14; p. 5, ¶'s 10 and 11; pp. 4-5, ¶'s 4 and 5, Deposition Testimony of R. G. Dougherty (pp. 12, 25-28, 35). Dougherty's "accurate and exact" depiction of the common boundary between the Counties was based on an incomplete 1890 survey and surveying standards not included on Appellees' Exhibit 4 and no formal action concerning that survey or Exhibit 4 has taken place by either County's Commissioners Court. In fact, Douherty testified that he was not hired to establish new common boundaries or to relocate old common boundaries. **Note**: None of the Dougherty Deposition testimony including Respondents' Exhibit "4" (the plat in Appendix O afffidavits) is entered into the record in support of Respondents' Summary Judgment against Petitioners. (**Supplemental**

Record on Appeal, p. 6, ¶'s 12 and 13; pp. 7-7A, ¶'s 15, 16, 18 and 21, Deposition Testimony of R. G. Dougherty (pp. 31-34, 37, 47). Billy J. Thompson, Marvin Traylor, Sammie L. Spraglin, and Ethel Smith, **according to Respondents' Exhibit 4, all** live in Titus County and all submitted affidavits in support of Betty Hamilton's April 4, 1986, Deposition. **Note**: This Deposition was not made available to Appellants until on or about May 20, 1986, and was only referred to in Appellants May 9, 1986, Response to Motion for Summary Judgment which Response was incorporated by reference for all purposes into Appellants Motion for Judgment for Relief. Note also that the location of each affiants residence on Appellees' Exhibit "4" is depicted by a box rather than initials as stated in the affidavit. (**Supplemental Record on Appeal**, (Affidavit of Bettie L. Hamilton) (pp. 33, ¶ 2); Exhibits A, B, C, &

D to Betty Hamilton's Deposition).

Although all the Affiants indicate they, **according to Appellees' Exhibit "4"**, reside in Titus County, all state under oath that their deeds say they reside and are citizens in Morris County, Texas. (**Supplemental Record on Appeal**, (Affidavit of Bettie L. Hamilton) (p. 33, ¶ 2); **Supplemental Record on Appeal**, p. 16, ¶ 4, p. 17, ¶ 12, p. 18, ¶'s 16 and 17; Deposition Testimony of Jerry L. Chambliss (pp. 8-12, 27-29, 31-37)).

Respondent Skipper admitted in deposition testimony that County Appraisers have no authority to question the boundary lines of counties established by the State and that the process for determining county lines was not established by him. (**Supplemental Record on Appeal**, p. 11, ¶ 1; p. 13, ¶ 10; p. 12, ¶'s 8 and 9, Deposition Testimony of B. W. Skipper (pp. 12, 22-32). Skipper claims that he physically checked the Hamiltons'

property and discovered it was on the west side of the "TOBIN LINE" which line he had used for years and years in the past as a County line. This assertion directly conflicts with Registered Surveyor, Dougherty's testifimony that he calculated the TOBIN LINE in 1984 using sophisticated, state-of-the art equipment and that Dougherty did not know whether the Tobin Map Company ever located any boundaries or features on the ground, or whether Mr. Tobin ever surveyed the County lines. (**Supplemental Record on Appeal**, p. 13, ¶ 13, Deposition Testimony of B. W. Skipper (pp. 14, 35).

REASONS FOR GRANTING WRIT

A. A Writ of Certiorari should be granted to resolve questions presented which concern whether the Fifth Circuit's affirming of the District Courts' judgment violates this Court's rulings in Gomillion v. Lightfoot, 364 U.S. 339 (1960).

Particularly, this Court should determine whether the Texas Counties of Titus and Morris will be allowed to disassociate only black landowner/taxpayer Petitioners from Morris County (1) without following due course or process of law; (2) with only an informal, vague and unwritten agreement between the various tax and "appraisal officials" of the respective Counties, which officials admittedly do not have the authority to make such agreements and who are friends, (3) without any governmental orders or formal process; (4) with ostensibly no procedures on the record available to the Petitioners to adequately contest such action; (5) with overwhelming tardy response evidence that proves said Counties are absolutely wrong but which evidence has been suppressed by strict and harsh interpretations of the Federal Rules of Procedure by the District Court and, which interpretations

and results have been summarily sanctioned by the Fifth Circuit Court of Appeals; (6) with the white landowner/taxpayer citizens of said Counties not burdened with the boundary interpretations applied against Petitioners' race; (7) with a title opinion issued by a Federal Agency (FHA) supporting Petitioners. (Record on Appeal.)

B. Under the Facts and Circumstances, Black Petitioners were not afforded fair and just treatment in the Trial Court.

(i) The decision below is a clear example on why it is important that this Court exercise supervision over the Texas jurisdictions' rulings regarding race based issues of land ownership, land holdings, property taxation and First Amendment rights to freely associate and politic. Other than the shameful actions alleged and Petitioners' race, there is no reason Petitioners had to come this far to obtain simple justice. This

Court should monitor the rulings of the East Texas jurisdictions that are predicated on the traditional sorts of racial distinctions that pervade those jurisdictions interpretations in enforcement of laws and/or customs and the sitting federal courts' in their political subdivisions that show a predominant propensity to find nothing unusual in applying those racial distinctions as they relate to the foregoing privileges and immunities.

(ii) This Court should review the decisions below inasmuch as said decisions place an unequal burden on black Petitioners to own, hold and inherit land in Counties of their choice and on black Petitioners' ability to exercise the same rights, privileges and immunities as is enjoyed by said Texas Counties' white citizens to defend themselves against unlawful, state-of-the-art attacks by local government officials seeking to temper

political growth of black citizens and your Petitioners.

(iii) This Court should review the decision below inasmuch as that decision consciously aids and abets a serious condition of unequal treatment based on race and previous conditions of servitude relative to blacks' land ownership, holdings and inheritance in Texas and relative to the freedom of blacks to freely associate with the Counties of their choice.

(iv) This Court should review the decision below to correct the dual system of interpreting rules of procedure practiced by the lower federal Courts sitting in the race conscious districts of "East Texas" which interpretations are harsh on this Court's minority Petitioners. Not one of Petitioners' Motions (Motion to Continue, Motion to Respond (five (5) days out of time), Motion for Relief from Judgment,

Motion for New Trial), although reasonable and material, was granted and, no fair reason exists to explain the way Petitioners were treated other than the historic explanations of race and lack of representation and sensitivity to real and egregious circumstances affecting blacks owning or holding land in East Texas jurisdictions.

(v) The Court should review this case inasmuch as it is a classic example of the system of servitude employed by Texas authorities against black landowner/taxpayer Petitioners and their class, which servitude is encouraged and enhanced by the federal judicial system's propensity to: (1) (without any evidence) rule in the favor of said Texas authorities, work at denying Petitioners an adequate and fair opportunity to develope and present evidence to make a record, (2) make litigation expensive and burdensome on your poor black Petitioners, and (3) attempt to

characterize black counsel as untimely and unprepared as a reason for sanctioning the wrongs complained of here.

(vi) The Court should review this case inasmuch as the District Court, consistent with the foregoing propensities, supplied a crucial element of fact by erroneously taking judicial notice that the common boundary of the said Counties was as alleged by the Respondent Counties. This Court should review the case, inasmuch as the District Court's Summary Judgment, as a matter of law, is not supported by summary judgment proof and Petitioners allege that this is consistent with the foregoing propensities in East Texas.

C. This Court should review this case inasmuch as the District Court's Summary Judgment, under the facts and circumstances, was premature and Petitioners should have been granted their Motion to Continue for 90

days.

This Court should renew this case inasmuch as the Federal trial machinery was sabotaged and a 'fair contest' between the parties as intended by the summary judgment rules, was instead little more than an adjudication of a hypothetical fact situation imposed by Respondents' selective disclosure of misleading and fraudulent information.

THE QUESTIONS ARE SUBSTANTIAL

This Court has not had an opportunity to review whether only black landowners/ taxpayers of one County are subject to an unwritten, unofficial, vague agreement with an adjacent County, which agreement is by generalities expressing both Counties' unrestricted power - unlimited, that is, by the United States Constitution - to establish, destroy, or organize by contraction or expansion of its polical boundaries by using state-of-the-art surveying devices

yielding fraudulent, misleading, illogical, and implausible demonstrative evidence (a plat - Respondents' Exhibit "4") specially and only aimed at disassociating the black landowners/taxpayers of said Counties thereby depriving those blacks of preexisting civil rights uniquely inherent in their **long-time residency in Morris County**: (1) shown on their deeds and title opinions (including an FHA-title opinion), (2) where taxes relative to their land have been paid since 1875, (3) where they have voted since the poll tax was abolished 1/, and (4) having one the largest black voting precints and where said black landowners/taxpayers were politically active and served in elected, appointed, and volunteer capacities and served as jurors.

THE DECISION BELOW IS INCORRECT

A. THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING SUMMARY JUDGMENT ON THE PLEADINGS BASED ON THE FACT PETITIONERS HAD NOT SHOWN RACE TO BE A FACTOR IN THE CASE.

At the May 9 hearing, the Trial Court based its Summary Judgment on the fact that

no communication had been received by the Court in support of Petitioners' contention that there was racial discrimination connected with the taxing boundary policy involved in the case (**Record on Appeal**, Vol. 2, p. 3) and the facts of the case were essentially undisputed, that the property in question does lie, in fact, in Titus County. (Record on Appeal, Vol. 2, p. 4). Further, the Trial Court sua sponte took Judicial Notice that the property in question was located in Respondent Titus County, found that Respondent Morris County's taxing said property was not racially motivated, and found that the Court had no jurisdiction over dis-putes between Petitioners and Respondent

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1/ United States Constitution, 24th Amendment (August, 1964). Historically, the poll tax in Texas was another major obstacle employed by the Respondent Counties in attempting to make black voting more arduous, especially with the "white primary" gone. See Simth v. Allwright, 321 U.S. 649 (1944); and Nixon v. Herndon, 273 U.S. 536 (1927).

Counties for taxes Plaintiffs might have paid. (**Record on Appeal**, Vol. 2, p. 4, ll. 7-21). See Bernard v. Gulf Oil Co., 596 F.2d 1249 (5th Cir. 1979), rehearing ordered, 604 F.2d 449 (1979) on rehearing 619 F.2d 459 (1980) cert. granted, 449 U.S. 1033 (1980) aff'd, 101 S.Ct. 2193 (1980); Keller v. DRAVO Corp., 441 F.2d 1239, 1245 (5th Cir. 1971) cert. denied, 404 U.S. 1017 (1972).

In this case affidavits, deposition, live testimony, or other summary judgment evidence pursuant to Rule 56 (e) were not offered in Support of Respondents' Motions for Summary Judgment below and are not a part of the Summary Judgment Record. (Record on Appeal, Vol. 2). Respondents did not present evidence by affidavit, deposition, or other summary judgment proof that the "TOBIN LINE" was by due course or due process, formally accepted and adopted by the respective counties' governing bodies. This was required

due to Petitioners' complaint's version of the facts, the "on-the-ground," established and recognized boundaries formally accepted and adopted by said respective governing bodies and, as stated in historic title documents and other muniments of title relating to Petitioners' land.

Without a response by Petitioners, there are plenty reasonable inferences that can be drawn from the foregoing lack of substantive summary judgment evidence by Respondents. Further, Petitioners believe that: (1) all the indifference and lack of official action and concern in material areas of administration and policy by said Counties' respective governing bodies and/or agents relative to Petitioners and their class, (2) patent unequal administration of taxing, appraisal and assessment laws, rules and regulations, impacting the above-stated, substantial federal rights, (3) the fact that disputes of

this sort are generally thought to be easily resolved, (4) the fact that the unequal specially applied "TOBIN LINE" fenced the most influential Black political leader and other Blacks out of the largest Black voting precinct (#102) in Morris County politics and (5) other pre-existing Morris County privileges and immunities including the right to vote, all, inter alia, give rise to reasonable inferences of impermissible racial distinctions in tax administration and collection and appraisal policies, practices, and procedures and voting rights violations precipitated by race conscious activity.

Petitioners' Motion for Relief from Judgment was filed 18 days after the Summary Judgment default was rendered against them, but 4 months before said Judgment was "entered." That Motion for Relief was based on affidavits and other exhibits served with the Motion. Therefore, Petitioners were

timely under Rule 59(b) and, under remedial Rule 60(b). Petitioners' pleadings should have been construed to do justice. Accord, e.g., U.S. Gypsum Co. v. Schiavo Bros.Inc., 668 F.2d 172 (3rd Cir. 1981), cert, denied 102 S.Ct. 2038 (1981) (Movant should not be prejudiced by erroneous rule reference, but should be granted whatever relief his Motion shows him to be entitled to); Partridge v. Presley, 189 F.2d 645 (D.C. Cir 1951), cert. denied 342 U.S. 850 (1951) (Rule 59(b) merely provides maximum limitation and does not preclude litigants from moving for new trial before actual entry of judgment).

The District Court should not be allowed to participate in barring plenary review of substantial and material evidence showing the fraud and conspiracy raised by Petitioners' pleadings and evidence sought to be introduced by Petitioners' tardy response. The Counties already have inordinate resources

vis-a-vis your black Petitioners and use of the judiciary to further their wrongdoing is harsh and violates the federal policy to do justice, inter alia.

Petitioners' Response to Respondents' Motions for Summary Judgment raised genuine material issues of fact. A jury could draw inferences of racial distinctions from inter alia: (1) the lack of formal and legal authorization to tax using boundaries other than those established by Legislative Act and/or written Order of the Commissioners Courts of each county; (2) the lack of formal and legal authorization of the Counties to redefine and/or relocate a common county boundary in the Cason Community; (3) the fact that no evidence exists that the respective Counties have attempted to formally accept Dougherty's Exhibit "4" as a true, accurate, and exact depiction of said common boundary; (4) the fact that Petitioners' historic deed

and other muniments of title that are sworn and filed documents recite Morris County as the situs of Petitioners' land; (5) the fact that the geometric description of Petitioners' land places that land in Morris County; (6) the fact that Petitioners' deeds and other muniments of title relative to the land at issue have been duly recorded in Morris County Deed Records since 1875 (Supplemental Record on Appeal, Exhibits A, B, C, D, E and F); (7) the fact that Respondents' Exhibit "4" (Supplemental Record on Appeal, Exhibits 1-4 (affidavits)) fixing the common boundary of the two counties in the Cason Community is internally and on its face inconsistent; (8) the fact that Petitioners have historically paid taxes (Supplemental Record on Appeal, Exhibit 1 to Chambliss Deposition) and vote (Supplemental Record on Appeal, Exhibits 3 and 4 to Chambliss Deposition) run for and served in

elected and appointed office in Morris County; and, (9) the fact that Petitioners receive (even today) services from Morris County.

Therefore, Petitioners sought to encourage the lower Courts to reverse their harsh and unwarranted treatment of your Petitioners by attempting to bring all the foregoing facts and arguments to said lower Courts' attention with the Motion for Leave to File Summary Judgment Response out of time (which was never ruled on by the District Court and with the pleading styled Motion for Relief from Judgment which was denied by the District Court. The issues in this case fairly should have been resolved by the jury requested as fact finder after a full development through fair and adequate discovery and a full hearing of all the evidence. In re Yarn Processing Patent Validity Litigation, 498 F.2d 271 (5th Cir. 1974) cert

denied, 419 U.S. 1057 (1974). Accord, e.g., Coke v. General Adjustment Bureau Inc., 640 F.2d 584 (5th Cir. 1981); Southern Distributing Co., Inc. v. Southdown, Inc., 574 F.2d 824 (5th Cir. 1978); BAW Mfg. Co. v. Saks Fifth Ave., Ltd., 547 F.2d 928 (5th Cir. 1977).

B. THE TRIAL COURT'S TAKING JUDICIAL NOTICE THAT THE PROPERTY IN DISPUTE WAS WITHIN TITUS COUNTY, TEXAS WAS CLEARLY ERRONEOUS AND SUPPLIED A CRUCIAL AND MATERIAL, CONTROVERSIAL FACT TO SUPPORT THE GRANTING OF RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT.

Prior to the civil action brought below, the issue of the proper situs of Petitioners' land had never been adjudicated. The issue of the common boundary in the Cason community had never been adjudicated. The location of said property was subject to reasonable dispute in that (1) said property's situs was not generally known other than in the Cason, Texas Community and was not capable of accurate and ready determination by resort to

sources whose accuracy cannot reasonably be questioned. See e.g., U.S. v. Salinas, 611 F.2d 128 (5th Cir. 1980); U.S. v. Alvarado, 519 F.2d 1133 (5th Cir. 1975) cert. denied, 424 U.S. 911 (1976)(judge clearly warranted in taking judicial notice of immutable geographic and physical facts adjudicated in prior proceedings). Anderson v. City of Bessemer City, N.C., 105 S.Ct. 1504, 1511 (1985).

C. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING PETITIONERS' MOTION FOR RELIEF FROM JUDGMENT AND, IN THE ALTERNATIVE, IN NOT CONSTRUING THE MOTION AS A MOTION FOR NEW TRIAL IN ORDER TO DO JUSTICE.

Rules 59(b) and 60(b) should be liberally construed together in order to do substantial justice. Motions under Rules 59(b) and 60(b) are directed to the sound discretion of the District Court, and its denial of relief upon such motion will be set aside on appeal only for abuse of that

discretion. It is not enough that the granting of relief might have been permissible, or even warranted - denial relief here is so unwarranted as to constitute an abuse of discretion on the part of the lower Courts. The discretion of the district court is not unbounded, and must be exercised in light of the balance that is struck between the demands of justice and the remedy for a tardy, yet seasonable, response to Respondents' Motions for Summary Judgment below. Here, denial of relief precludes examination of the full merits of a cause that has been building for over 14 years and quickened in the Fall of 1984.

In United States v. Gould, 301 F.2d 353, 355-56 (5th Cir. 1962), quoting 7 Moore's Federal practice ¶ 60.19, at 237-39, the Fifth Circuit set forth factors it chose to ignore that should inform a district court's consideration of a motion under Rules 59(b)

and 60(b): (1) That judgments should not lightly be disturbed; (2) that the motions are not to be used as substitutes for appeal; (3) that the rules should be liberally construed in order to achieve substantial justice; and (4) whether the motions were timely made and, as for Rule 60(b), whether made within a reasonable time. If the judgment was a default or a dismissal in which there was no consideration of the merits, the interest in deciding this case on the merits outweighs, in this particular case, the interest in the judgment. There is overwhelming merit in the Petitioners' claims. If the judgment was rendered after a trial on the merits, the Petitioners would have had a fair opportunity to present their substantial claims. There are intervening equities that would make it inequitable to deny Petitioners relief and other factors relevant to the injustice of the summary

judgment and lower Courts' actions under attack. The Court, upon review, should conclude that the District Courts' denial of relief was sufficiently misaligned with the equities as to warrant reversal and removal.

In 1987, the Petitioners do not know how to characterize their treatment except that that treatment lends itself to relics of the past South.

In any event, the instant summary judgment bears many of the characteristics of a default judgment. It was entered in the appellants' absence; it was entered prior to and without the taking of any substantive evidence; if any evidence was adduced, (none is on the record) that evidence was of uncertain scope and focus insofar as the substantive merits of the case are concerned and dealt with Respondents' generalities expressing their unrestricted power to establish, destroy, or reorganize by contrac-

tion or expansion their respective political subdivision boundaries; and, it is clear from the record that the Petitioners did not, in fact, have an opportunity to present their side of the fourteen (14) year controversy. It is clear that the full merits of the cause were not examined. What happened to Petitioners should not be favored, and the Rules of Procedure should be liberally construed in favor of trial on the full merits of the Petitioners' civil rights case. No injustice will be done by reviewing the judgment below. The equities in this case ought to militate strongly in favor of this Court granting relief.

The presence of injustice is clear since the Respondents are unable to show the existence of a defense of sufficient merit to indicate the possibility that the outcome would not be different upon retrial. Petitioners in this case have shown the

existence of sufficiently meritorious claims.

The absence of a fair opportunity to present their claim is likewise clearly demonstrated. The Petitioners, through no fault of their own, did not appear at the proceeding below. The absence resulted from unusual circumstances. Appellants attorney could not make the "conference" that turned out to be a hearing based on brake failure. Nothing in the record shows that Petitioners' Counsel did not respond timely and seasonably to all Motions throughout the proceeding and during discovery.

Other equities as well would militate in favor of relief. There are no intervening rights that would be prejudiced by the granting of relief; no great delay is likely to occur; the rights at stake and the amount of money involved is very great, itself militating in favor of a full trial on the merits; and any possible malpractice remedy

against Petitioners' attorney would be inadequate to restore the Petitioners to their pre-summary judgment position.

In the face of the unusual facts and circumstances delineated above, this Court should conclude that it must yield to the equities of the case in order that the Petitioners may be afforded their deserved day in court. The lower Court abused its discretion in denying Petitioners relief from Summary Judgment. Its actions in denying review of Petitioners' evidence should be vacated to accomplish justice. E.g., Seven Elves Incorporated v. Eskenazi, 635 F.2d 396 (5th Cir. 1981).

Respondents' contentions in support of their Summary Judgments are internally and on their face inconsistent. First, Respondents claimed that Respondents' Exhibit "4" (Plat to Appendix O affidavits) is an exact, correct, precise depiction of the boundary

line between Morris and Titus Counties in the Vicinity of Cason, Texas. If that statement is correct, why would it be necessary to calculate the "TOBIN LINE" inasmuch as Appellants property clearly would be within Titus County. This manifest inconsistency was presented to the Trial Court at the May 9, 1986, Summary Judgment hearing and should have been construed in the light most favorable to Petitioners.

This Court has made it clear that even the broad discretion vested in a State government to fix municipal boundaries cannot be used as an instrument to circumvent constitutionally protected rights and that where constitutional wrongs are perpetrated in the guise of fixing said boundaries, the breadth of the legislative power being exercised provides no insulation from judicial correction. Gomillion v. Lightfoot, 364 U.S. 339, 344-346 (1960).

D. PETITIONERS' COMPLAINT STATED A PRIMA FACIE CASE UNDER 42 U.S.C. § 1983.

Plaintiffs also bring this civil action pursuant to 42 U.S.C. § 1983 complaining that the failure of Morris and Titus Counties to follow the law in implementing or executing boundary changes relative to Petitioners is based on their race and hence unconstitutional action and that Respondent Counties have implemented or executed a policy statement or decision officially adopted and promulgated by those bodies' officers. Petitioners further claim that the constitutional deprivations of due process and equal protection of the laws and customs are visited pursuant to Defendants governmental customs even though such customs have not received formal approval through the bodies' official decisionmaking channels because the practices of the individual Defendants (who have been in office since the beginning of

Plain iffs' ordeal) are so permanent and well settled as to constitute a 'custom or usage' with the force of law. Plaintiffs allege that the boundary issue that has continued over fourteen (14) years and that has, according to Plaintiffs, caused the death of or substan tially contributed to the death of two from among them, are based intentional or acts of indifference and conspiracy that may fairly be said to represent official policy directed toward blacks and for which policy the two Counties (Morris/Titus) might be held responsible. See generally Monell v.New York City Department of Social Services, 436 U.S. 658, 690-91 (1978); Bennett v. The City of Slidell, 728 F.2d 762 (5th Cir. 1984), on rehearing aff'd in part and rev'd in part, 735 F.2d 861 (1984); Webster v. The City of Houston, 735 F.2d 838 (5th Cir. 1984), aff'd in part, rev'd in part and remanded, 739 F.2d 993 (1984); Languirand v. Hayden, 717 F.2d

220 (5th Cir. 1983); Garris v. Rowland, 678 F.2d 1264 (5th Cir. 1982); Turpin v. Mailet, 619 F.2d 196 (5th Cir. 1980). The Trial Court stated that Petitioners had not shown race motivation; as far as Petitioners know, there is no requirement of race motivation under Section 1983 (42 U.S.C. § 1983) merely, that the protested rights be violated under color of state law or custom which is the gravemen of Petitioners' complaint.

Finally, the "TOBIN LINE" applied to Petitioners impairs rights, privileges, and immunities arising or created under contract or title document with a department of the Federal government. (See Supplemental Record on Appeal, Exhibits "8" and "9" to George Washington Hamilton's Deposition Testimony).

The law does not require Petitioners to do a frivilous act. Considering the fraud, conspiracy and bad faith at the local levels of government for Morris and Titus Counties

for over 14 years, the clear location of the land under review, an agreement that had no life other than in the minds of County officials and which agreement does not have the face of orders from the respective governing bodies though these bodies cannot be unaware of what has been attempted, Petitioners have and had no procedural or substantive opportunity for redress at the administrative and judiciary local levels in Morris and Titus County and thus have and had no adequate or available remedy other than in federal Court to vindicate federal rights. Huffman vs. Pursue, Ltd., 420 U.S. 592, rehearing denied 421 U.S.971 (1975); Beale v. Blount, 461 F.2d 1133 (5th Cir. 1972) (no requirement to exhaust available state administrative remedies before bringing federal case no matter what state administrative avenues for relief are open). Accord, Ehlers v. City of Decatur, Georgia, 614 F.2d 54 (5th Cir.

1980); Watson v. Briscoe, 554 F.2d 650 (5th Cir. 1977).

Respondents cite Gaines County v. Terry County, 152 S.W.2d 509 (Tex. Civ. App. - El Paso 1941), rev'd, Sub nom Yoakum County v. Gaines County, 163 S.W.2d 393,346 (Tex. 1942) as authority for some "unproven" agreement between Defendant Counties, for purposes of assessing and collecting taxes, to recognize the county line as fixed or shown on the Tobin Map. The Yoakum County case is distinguishable. Here, however, the boundary line was marked on the ground in 1875 pursuant to lawful commission and appointment by JAMES C. HENDERSON, Morris County Surveyor. See Appendixes G, H, I and J. Said line has been established and definitely marked, known and recognized by the General Land Office and all other parties involved since 1875. (See also Supplemental Record on Appeal p. 40). Therefore, under Yoakum County, the line

established by Henderson in 1875 must be accepted. Gaines County v. Terry County, 152 S.W.2d 509 (Tex. Civ. App. - El Paso 1941), rev'd, Sub nom Yoakum County v. Gaines County, 163 S.W.2d 393, 346 (Tex. 1942); See Supplemental Record on Appeal, Exhibit F (Texas Attorney General's Opinion).

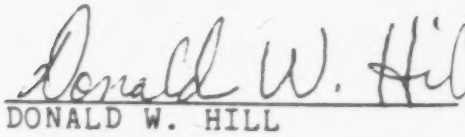
CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

HILL HICKS COLLINS
Attorneys and Counselors at

BY:
DONALD W. HICKS, SR.

BY: 
DONALD W. HILL

1201 Main Street
1530 One Main Place
Dallas, Texas 75202
(214) 744-0255

PROOF OF SERVICE

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Before me, the undersigned Notary Public in and for Dallas County, Texas, on this day personally appeared DONALD W. HILL, who being by me duly sworn, upon oath stated; I, DONALD W. HILL, am a member of the Bar of the Supreme Court of the United States and have been, along with Donald W. Hicks, Sr., an attorney of record for Petitioners herein in all proceecdings in which they have been involved as named parties in the Courts below.

I further state upon oath that upon the 9th day of June, 1987, I served copies of the foregoing Petition for Writ of Certiorari on Respondents by depositing the same in the United States Mail, with first class postage prepaid, addressed to the following counsel of record in the Courts below, at the address indicated, to-wit: MICHAEL R. BUCHANAN, Strasburger & Price, P. O. Box 50100, Dallas,

Texas 75250; NORMAN C. RUSSELL, 803 Spruce Street, P. O. Box 1049, Texarkana, Texas 75504; Joe W. Lovelace, 107 East Rush Street, Linden, Texas 75563; and MARK M. DONHEISER, 901 Main Street, LB 175, Dallas, Texas 75202.

Signed: Donald W. Hill
DONALD W. HILL

SUBSCRIBED AND SWORN TO before me by the said Donald W. Hill, this the 9th day of June, 1987.

S E A L

Signed: Darwin Brown
Notary Public in and for the
State of Texas

My commission expires:

08/19/87

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 86-2547

GEORGE W. HAMILTON, ET AL.,
Plaintiffs-Appellants,

versus

MORRIS COUNTY, TEXAS, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas

ON PETITION FOR REHEARING

(MARCH 24, 187)

Before POLITZ, WILLIAMS and JONES, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby Denied.

ENTERED FOR THE COURT:

SIGNED/Edith H. Jones 3/10/87
United States Circuit Judge

REHG-4

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 86-2547
Summary Calendar

GEORGE W. HAMILTON, ET AL,
Plaintiffs-Appellants,

versus

MORRIS COUNTY, TEXAS, ET AL,
Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(M-85-149-CA)

(February 11, 1987)

Before POLITZ, WILLIAMS,and JONES, Circuit Judges.*

Plaintiffs-Appellants in this civil rights action appeal from the district court's summary judgment in favor of all

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on th public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should no be published.

several grounds: that there was no evidence that the counties' determination was motivated by racial animus, that the federal action was time barred, and that the Plaintiffs had failed to exhaust their available state remedies. Appellants neither responded to the motions for summary judgment nor appeared at the hearing on the motions. Faced with this complete failure to contest the motions, the district court granted all defendants summary judgment.

We find no error in the district court's action. A party moving for summary judgment is entitled to judgment as a matter of law hhen the nonmoving party fails to make a sufficient showing on an essential element of his case on which he has the burden of proof. Celotex Corp. v. Catrett, 106 S.Ct. 2548, 2553 (1986). In this case, plaintiffs made no showing of any kind of any element of their case, as they failed to contest the defendants' motions until well after the court had granted summary judgment.[1]

1/ Even considering Appellants' tardy attempts to contest summary judgment on their merits, it appears that this result was inevitable. Other than conclusionary deposition testimony of Appellants, there is no evidence to support their claims of racial discrimination or disparate teratment, and the undisputed evidence indicates that the property is in fact located in Titus County.

Nor were the district court's actions after summary judgment erroneous. Appellants complain that the court abused its discretion in denying their Rule 60(b) motion for relief from the judgment. However, this motion was filed on May 27, 1986, well before the final judgment was entered in the case. As Rule 60(b) applies only to final judgment or orders, Appellants' motion was untimely and premature, and thus the district court was warranted in overruling it. Even if we assume, **arguendo**, that the motion was timely, we find nothing in the record to indicate that the district court abused its discretion in overruling Appellants' motion.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

GEORGE W. HAMILTON, ET AL	§	
	§	
	§	
VS.	§	CIVIL ACTION NO.
	§	M-85-149-CA
	§	
MORRIS COUNTY, TEXAS, ET AL	§	
	§	

ORDER GRANTING SUMMARY JUDGMENT

Before the Court are motions for Summary Judgment filed by Defendants Titus County, Texas, Titus County Appraisal District and Pat Beck, individually and as former Assessor/Collector of Titus County, Texas, and Defendants Morris County Appraisal District, B. W. Skipper, individually and as Chief Appraiser, Morris County, Jerry Chambliss, Assessor/Collector, Morris County, and Morris County, Texas, in the above styled and numbered cause on March 22, 1986.

The Plaintiffs have had ample time to raise genuine issues of material fact. On January 10, 986, at 8:30 a.m., the Court held a status conference at which time Plaintiffs were granted additional time to furnish facts which might create a genuine issued of material fact. Plaintiffs, as of May 9, 1986, had not presented any new fact. On April 4, 1986, and April 22, 1986, respectively, Defendants from Titus County and Defendants from Morris County, filed motions for Summary Judgment in the above styled and numbered cause. As of May 9, 1986, Plaintiffs had filed no response to Defendants' motions for Summary Judgment. The Court set a hearing on the motions for Summary Judgment for May 9, 1986, at 1:30 p.m. This Court notified Plaintiffs of the hearing. Plaintiffs failed to appear but called the Court only forty-five (45) minutes before the scheduled hearing and asked the Court to postpone the hearing. The Court held the hearing at 1:30 p.m. on May 9, 1986, and entered the Order in open court.

As stated in open court, the Court finds that there are no genuine issues as to any material fact. Pursuant to Rule 56(c), F.R.C.P., Defendants' motions for Summary Judgment are granted. It is ORDERED that Plaintiffs take nothing by this suit against the Defendants. Cost of court are taxed against the Plaintiffs, jointly and severally.

SIGNED and ENTERED this 4th day of September, 1986.

Signed/Robert M. Parker
ROBERT M. PARKER, JUDGE
UNITED STATES DISTRICT

NUNC PRO TUNC: May 9, 1986

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

GEORGE W. HAMILTON, et al	)	
	)	
vs.	)	
	)	No. M-85-149-CA
	)	
MORRIS COUNTY, TEXAS, et al.	)	

O R D E R

The Court having considered the matter of Plaintiffs' "motion for Relief from Judgment" and it appearing that such is not well taken and should be denied,

It is accordingly ORDERED that the "Motion for Relief from Judgment" be and the same is hereby DENIED.

SIGNED this 17 day of June, 1986.

Signed/Robert M. Parker
Judge Presiding

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

GEORGE W. HAMILTON, ET AL,
Plaintiffs,

VS. CIVIL NO:
M-85-149-CA

MORRIS COUNTY, TEXAS, ET AL,
Defendants.

--H E A R I N G--

HEARD AT: Marshall, Texas
ON: May 9, 1985

1:30 P.M.

THE COURT: Be seated.

In Hamilton versus Morris, 85-149.

MR. RUSSELL: Norman Russell and Joe Lovelace for the defendant, Morris County.

MR. BUCHANAN: Michael Buchanan, Your Honor, for the three Titus County defendants.

THE COURT: We received a telephone call from Mr. Hicks, who apparently was of the impression we were going to have some

kind of conference and we -- or my staff advised Mr. Hicks that we would proceed at 1:30 today with this hearing.

Now, why don't you gentlement go ahead and take your seats. I have reviewed this file in its entirety. Is my memory not correct that at an earlier pre-trial hearing I extended an opportunity to plaintiff's counsel to provide the Court with some information or evidence in support of plaintiff's contention that there was racial discrimination connected with the taxing policy involved in this case? Am I confusing this with another case or is my memory correct?

MR. RUSSELL: That's correct, Your Honor. We had the pre-trial conference hearing.

THE COURT: Well, I have received no communication. It's apparent that the facts of this case or essentially undisputed, that the property in question does in fact lie in Titus County.

I think the evidence in support of that is of such a nature, under Rule 201 --

the Court could take judicial notice of that now. I have seen no evidence that Morris County, levying taxes on this property in the past, was in anyway racially motivated. If there is a legitimate dispute between the plaintiff and Morris County for taxes plaintiff might have paid to Morris County, I failed to see where jurisdiction lies in this Court on that question. My inclination is that I have no choice but to grant the Summary Judgment in the case.

I was of the opinion that when I extended the opportunity to plaintiff to provide some evidence that because of the peculiar nature of this case, it was going to be essentially the problem.

Do either of you gentlemen recall how long ago it was when we had the pre-trial hearing? Do you know, Mr. Hannah?

MR. HANNAH: There was a status conference held on January 10th.

THE COURT: This year?

MR. HANNAH: Yes, sir.

THE COURT: Some four, five months ago. Well, the Motions for Summary Judgment, gentlement, are GRANTED and I will enter an appropriate Order.

MR. RUSSELL: Your Honor, may we file among the papers -- the attorney has suplied to us in the discovery process some handwritten notes of Mr. Hamilton which never found their way into this Court, yet, they were furnished to us in the discovery process, which we think go an awful long way in supporting our limitation defense, which if there should be an appeal, we would like tohat to be before the Court. It is a stack of papers an inch thick.

THE COURT: Were they secured as an exhbit to a deposition?

MR. RUSSELL: Your Honor, we asked for these prior to deposition and they were not furnished in the notice of the deposition. We had also filed earlier a motion for production of all the documentations supporting his claim. Then after Mr. Hamilton passed away suddenly -- one day he mailed all

this stuff to us and said we have now found this diary that this man kept and it is a very revealing diary from the standpoint of what he says about what he knew in '74, '71, '72, all the way through. Those things have not reached this Court yet or this Clerk's office. We would like to get them among the papers of the case.

THE COURT: How do you wish to do so?

MR. RUSSELL: We can just bundle them up an I think I would attach to them a statement that these have been supplied to us in the ocurse of the discovery process, and we seek to file them as papers among this case.

THE COURT: All right. You want to file them as exhibits to your Motion for Summary Judgment?

MR. RUSSELL: Yes, sir, that would be fine.

REPORTER'S NOTE: Whereupon the said papers were filed with the Clerk of Court.

THE COURT: Thank you, gentlemen.

HEARING CONCLUDED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

---REPORTER'S CERTIFICATE--

I, JERRY T BLOXOM, Official Court Reporter for the Eastern District of Texas, do hereby certify that the foregoing hearing is a true and correct transcript of th proceedings heard before the Honorable Robert M. Parker, Judge.

GIVEN UNDER MY HAND AND SEAL this 4th day of August, 1986.

Signed/Jerry T Bloxom
JERRY T. BLOXOM, CSR, RPR.

IN THE UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

GEORGE W. HAMILTON, ET AL., §
§
APPELLANTS, §
§
VS. §
§
MORRIS COUNTY, TEXAS, ET AL., §
§
APPELLEES. §

NO. 86-2547

PETITION FOR PANEL REHEARING

COMES NOW the Appellants, George W. Hamilton, et al., and submit this Petition for Panel Rehearing in the above-entitled and numbered cause pursuant to Federal Rules of Appellate Procedure 32(a) and Local Rule 32. In support thereof, Appellant would state the following factual and legal matters:

I.

A. In 1946, the Morris County Assessor-Collector placed Appellants on his tax roll base on prior tax rolls annually brought forward, Morris County Deed Records of the Morris County Clerk's office, and

information provided by Appellants and their predecessors in title. From 1875 to 1981, Morris County carried Appellants' property on its tax rolls. Therefore, Appellants agree with the Court that Appellants' homesteads were understood to be situated in Morris County, Texas.

B. In 1981, Appellee Skipper, Morris County Chief Appraiser, dropped Appellants from the appraisal rolls. Appellee Skipper first testified that Appellants were dropped from the Morris County tax rolls based on the representations by Southwestern Appraisal, a private apppraisal company hired by both Morris and Titus Counties to "evaluate" all property in the respective counties. Skipper testified that the only authority Southwest Appraisal had was to appraise property on the 1981 Morris County Assessor-Collector tax rolls. Skipper testified that even though Appellants appeared on the Morris County tax

rolls, Southwest did not appraise the property for Morris County since it had earlier appraised that same property on Appellee Titus County Assessor-Collector's tax rolls.

C. In December 1971, Appellees Beck an Titus County obtained Pearl Hamilton's deeds to said property and added her property to the Titus County tax roll with no notice to Mrs. Hamilton. In 1974, Appellees Beck and Titus County added George and Bettye Hamilton's homestead to the Titus County tax rolls without notice to the Hamiltons. The citizens of neither County have ever voted on the change of boundaries that allegedly caused the Appellants to be dropped from the Morris County tax roll.

II.

A. Appellee Skipper testified that Southwestern Appraisal had placed Appellants' property in Titus County by use of the "Tobin Map", which map was originated to serve the

oil industry. Skipper stated that he had used the "Tobin Line" from said map for years and years in the past as a County division line. Further, Skipper testified that he physically checked Appellants' properties and could actually see that those properties were clearly on the west side of the Tobin Line and hence in Titus County. Skipper stated that use of the Tobin Line was not commissioned by Morris or Titus County Commissioners Court. Finally, Skipper testified that he had no authority to question the "established common boundary in Cason, Texas between Morris and Titus Counties.

B. Appellants stress that Skipper's testimony clearly conflicts with the expert testimony of R. G. Dougherty, licensed surveyor. Dougherty testified that he was asked to prepare a survey for use in a State court proceeding to determine the situs of

Appellants' properties, especially George Hamilton's homestead. Specifically, Dougherty testified that the "Tobin Line" was calcu-lated in December 1984, using accurate instrumentation containing computers and light beam transmitters. These highlighted facts create irreconciliable and material conflict between the various Appellees' explanations for imposition of the Tobin Line burden on Appellants' citizenship rights acquired by 36 years of residency. First, Skipper could not have visually observed the Tobin Line and, hence, would not have been able to determine by on-site inspection that Appellants' properties fell on the west side of that particular Tobin line. Second, Dougherty's survey plat attached to his deposition established a common county boundary 1,833 feet east of the Tobin Line. This, according to Morris County Assessor-Collector Chambliss' deposition, resulted in Morris County voting precinct

102 and the Morris County Courthouse Annex physically located in Titus County. Chambliss and Titus County Assessor-Collector Beck both testified that there are no voting precincts or County facilities belonging to Morris County physically located in Titus County and vice versa. Chambliss, Beck and Skipper testified that residents of Morris and Titus do not physically vote outide their respective counties. Chambliss and Beck testified that there is no authority for or agreement between Morris and Titus Counties allowing said counties to collect taxes on property outside their established boundaries, except that, according to Dougherty's survey plat, Morris County taxes citizens 1,833 feet over from the Appellees' "Tobin Line common boundary" into this County.

III.

A. Appellees 1984 and 1985 tax and voters registration rolls clearly show that

only Blacks bear the political burden of "Tobin Line", but that whites directly on the "Tobin Line," and more West than Appellants, have escaped the burden of the "Tobin Line". Whites directly on the "Tobin Line" have escaped this burden on their voting and residency rights merely relying on their duly recorded deeds and the past Morris and Titus County Tax rolls. Whites have not had to endure twelve (12) years of nagging unresolved illegal action that is not reduced to written policy or orders as an open government requires.

B. The Court should constantly note that George Hamilton was politically active in Morris County voting precint 102, which precint was 78% Black and 22% white and was one of three predominantly Black precincts and the largest precint by number. The Court should also note that the Hamiltons were extremely active in Politics in Morris County

and, in 36 years had helped to organize and build Black voting strength and political involvement. George Hamilton was particularly involved in Morris County Politics and was the first appointed and elected official in Morris County having held a School Board seat. George Hamilton was gearing up to retire and run for a County Commissioner's seat whch he could have won based on the political good will he had built up and the precinct numbers. His wife was just as involved with George. The Court should keep in mind that the Hamiltons had exercised their county franchise in Morris County since the abolition of the poll tax.

IV.

A. These facts fall clearly under the Supreme Court's decision in Gomillion v. Lightfoot, 364 U.S. 339 (1960). That case challenged the validity of an Act by the Alabama legislature redefining the boundaries of the City of Tuskegee. Negro citizens who

were at the time of that redistricting measure Tuskegee residents brought an action in a United States District Court for a declaratory judgment that the Act was unconstitutional, and for an injunction to restrain City and County officials from enforcing the Act against them and other Negroes similarly situated.

B. The Negro Petitioners had claimed that enforcement of the Act, which alters the shape of Tuskagee constituted discrimination against them in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment and would deny them their pre-existing right to vote under the Fifteenth Amendment.

C. The District Court granted Respondents' Motions for Failure to State a Claim upon which relief could be granted stating:

> This Court has no control over, no supervision over, and no power to change any boundaries . . . fixed by a duly convened and elected legislative body, acting for the people of the state . . . . Emphasis supplied.

364 U.S. at 340. The Supreme Court stated that the Case was being reviewed since it raised serious questions concerning the power of a State . . . in relation to the Fourteenth and Fifteenth Amendments. Id. at 341. The Court stated that the sole question was whether the Petitioners' allegations entitled them to make good on their claim that they were being denied rights under the United States Constitution. Id. The Court ruled that the "legislative control of municipalities . . . lies within the scope of relevant limitations imposed by the United States Constitution.

V.

The Court should recall that the Federal government holds a first mortgage filed for record September 8, 1972 in Morris

County, Texas. A federal, final title opinion, real estate deeds of trust, and private title opinions show Appellants as residents of Morris County. The Federal attorney that rendred the title opinion in 1972 represented Appellees against Appellants relative to the issue of their properties' situs in the State Court proceedings this Court found the Appellants voluntarily non-suited. The Court should be aware that Appellees Titus County earlier non-suited a tax foreclosure suit against Appellants. Also, Appellees Beck, Skipper and Chambliss could not disclose any special procedure applicable to Appellants situation. Beck claimed he did things the way he wanted and did not go by the book. Skipper claimed in later testimony that he determined who was in Morris County. Chambliss did not know why the Appellants were in their situation. None of Appellees ever offered, even though asked, a procedure for Appellants to follow in the last 12

years. Appellants had at least six (6) attorneys to write and request the proper procedures to go by but never received a response. In each letter requesting administrative procedures to resolve the issue, Appellants stated it would take formal action or a lawsuit in order for them to pay taxes in Titus. No dispositive response was ever received from Appellees. When Appellants filed their State Court proceeding, they did so in good faith, however, it became obvious to Appellants after the fraudulent Dougherty Survey was introduced in December 1984, that Appellees were attempting to excise Appellants out of Morris and defeat them of their civil rights acquired by their long term residency. Appellants, based on substantial statistical and personal experience with Appellees and their political involvement chose the Gomillion v. Lightfoot route in Federal Court. The Court should consider that the Hamiltons were faced

with: (a) Morris County not defending their position, (b) the Federal Attorney that rendered their title opinion working against them for both Counties to contradict his opinion in the Court, (c) the hired surveyor, Dougherty, who had not been formally appointed to Act creating in 1984 an obvious, fraudulent survey to sustain the Appellees' positions in State Court with their political allies. George Hamilton's assessment of the situation was grounded in substantial exerience with the County system and with the Appellees herein both as a Black citizen and politician of Morris County, Texas.

VI.

A. Appellants stress to the Court that the Trial Court's summary judgment was premature. On April 15, 1986, subsequent to George Hamilton's death on February 18, 1986, Appellants requested a 90-day continuance to

do additional discovery. Appellants notified the Court that they would seek to amend their Complaint to reflect pre-death discovery, new theories of recovery and to add and substitute parties. No counsel of record objected to this continuance. Balancing the Appellants' twelve (12) year ordeal, along with Appellants' life, liberty and property interests, and the untimely death of the primary litigant George Hamilton, which death is alleged to be caused and/or inextricably interwoven with the Counties' trying to excise George from his political power base to neutralize his political effectiveness and participation, the Trial Court's refusal to entertain Appellants' Motion for Continuance is an abuse of discretion.

B. The Court should find particularly revealing the Affidavits of Billy Thompson, Marvin Traylor, Sammie Spraglin and Ethel Smith, all taxpaying residents of Morris County, Texas and all in the same area

Appellants' properties were, in fact, in Titus County is not supported by the record which record does not establish such an agreement either in deposition testimony or affidavit form.

VII.

Finally, the Trial Court took judicial notice of a material fact in issue to support its summary judgment. The issue of Appellants' properties' situs has never been ajudicated. Further, said property's location was subject to reasonable dispute in that said property was not generally known other than in Cason, Morris County, Texas. Appellees provided no factual support whatsoever for a summary judgment. Incorporated herein for all purposes is Appellants' Brief, pp. 15-17. The Trial Courts judicial notice of the important fact that Appellants' properties are in Titus County is clearly erroneous. Indeed, based on the state of the record prior to Appellants' tardy response,

the Trial Court's findings, including those judicially noticed, are patently illogical and implausible.

The Court's conclusion that Appellants made no showing of any kind of any element of their case in as much as they failed to contest the Defendants' Motion until well after the Court granted Summary Judgment is a mischarac terization of Appellants' seasonable five (5) day late response. Further, this Court should review the deposition testimony in light of the twelve (12) year ordeal, coupled with the political, life, liberty, and property interests acquired over thirty-six (36) years of Morris County residency and the perceptions of the victims. The realness of the Appellants' situation was accented by Appellant George Hamilton's untimely death due to the prolonged activity specifically directed at him and other Blacks. The only Black politician in Morris County was in a position, under the circumstances,

to draw more than raw conclusions and a jury could so find from the three thousand plus pages of recorded and official documents, and personal diaries accompanying that testimony in the tardy response.

WHEREFORE, PREMISES CONSIDERED, Appellants would request that the Court grant this petition for panel rehearing and subsequently allow more discovery and an eventual jury trial on the merits and an opportunity to add the Federal Farmers Home Administration and General Land Office of the State of Texas.

Respectfully submitted,

HILL HICKS COLLINS
Attorneys and Counselors at Law

BY: Signed: Donald W. Hicks,Sr.
DONALD W. HICKS, SR.

Renaissance Place - Suite 530
714 Jackson Street
Dallas, Texas 75202
Telephone No. (214) 744-0255

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

GEORGE W. HAMILTON, ET AL., §
Plaintiffs, §
§
VS. §
§
MORRIS COUNTY, TEXAS, ET AL., §
Defendants. §

CIVIL ACTION NO. M-85-149-CA

MOTION FOR RELIEF FROM JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW PLAINTIFFS and request that threlief t grant the Plaintiffsfrom entry of summary judgment on May 9, 1986, and that the Court set aside its ruling granting a summary judgment against Plaintiffs and in favor of all Defendants and that the Court reconsider Defendants' Motions for Summary Judgment in light of Plaintiffs' Response to Defendants' Motions for Summary Judgment (with Exhibits) filed of record in this cause on May 14, 1986, and would, pursuant to Fed. R. Civ. P. 60(b), show the Court as follows:

I.

A. On October 7, 1986, Plaintiffs noticed Defendants PAT BECK and TITUS DEFENDANTS, CHAMBLISS and B. W. SKIPPER and all MORRIS COUNTY DEFENDANTS for Deposition to begin on Friday, November 1, 1985. Attached hereto marked Plaintiffs' Exhibit "A" and incorporated herein for all purposes is a copy of that Notice of Deposition.

B. Defendants notified Plaintiffs that date ovember 1, 1985 Depositions'was not convenient with their schedules at which time the parties agreed to postpone the depositions. Thereafter the parties agreed to postpone oral depositions until after the Christmas holidays.

C. On December 13, 1985, this Court entered a written notice that all lead counsel for all parties were required to attend a status conference in the United States Courthouse, Marshall, Te as on Friday,

January 10, 1986, at 8:30 A.M. Attached hereto marked Plaintiffs' Exhibit "B" and incorporated herein for all purposes is a copy of that notice. Donald W. Hill, of Hill Hicks Collins attended that conference in lieu of Donald W. Hicks, Sr., who had a hearing on his Motion to Disregard Findings on Special Issues and For Entry of Judgment in Favor of Plaintiff scheduled on the same date, January 10, 1986, at 10:00 A.M. This was a three-day jury trial where only Mr. Hicks had developed, presented and argued the case, and where only Mr. Hicks could argue the Motion. Attached hereto marked Exhibit "C" and incorporated herein for all purposes is a copy of the letter scheduling that hearing on the Motion to Disregard dated December 30, 1985.

D. Sometime on or about January 13, 1986, the parties agreed to begin oral depositions on the 13th and 14th of February,

1986. Attached hereto marked Exhibits "D" and "E", respectively, are copies of a January 13, 1986 letter to Mr. Hicks (with copies going to Messrs. Norman C. Russell and Joe W. Lovelace) and Plaintiffs' Notice of Oral Deposition dated January 17, 1986, scheduling the depositions as agreed for February 13 and 14, 1986.

E. On February 13 and 14, 1986, the paroral were only able to complete thedeposi-tions of the lead Plaintiffs, George W. Hamilton and Verine Hamilton, and Defendants Pat Beck, B. W. Skipper and Jerry Chambliss and the Defendants' expert, R. G. Dougherty,licensed surveyor.

F. On February 18, 1986, four days after the February 13 and 14, 1986 deposi-tions, lead Plaintiff George W. Hamilton, died. Attached hereto marked Exhibit "F" and incorporated herein for all purposes is a copy of a certified copy of Mr. Hamilton's Certificate of Death.

G.On or about April 3, 1986, counsel for Plaintiffs received in his office the depositions for Plaintiffs George W. Hamilton and Verine Hamilton and the depositions of Defendants Pat Beck, B. W. Skipper and Jerry Chambliss and Defendants' expert, R. G. Dougherty, licensed surveyor. Attached hereto marked Exhibit "G" and incorporated herein for all purposes are copies of the front cover of the three (3) wrappers that the above depositions and accompanying exhibits were delivered showing a post meter mark of April 1, 1986.

H. George W. Hamilton was the personal representative of Plaintiff Estate of Pearl Hamilton. On April 4, 1986, Plaintiff Betty Hamilton was denied the right to seek letters of administration for Plaintiff G. W. Hamilton's Estate in Morris County by the Defendants who contended she lived in Titus County. On April 4, 1986, the application for substitution of Warren Harding Hamilton

as successor administrator over Pearl Hamilton's estate which had been administered in Morris County was denied by the Defendants.

I. On April 4, 1986, by agreement of parties, Plaintiff Betty Hamilton was deposed. To date, Mrs. Hamilton's deposition has not been returned for her signature. Mrs. Hamilton's deposition includes important exhibits material to Plaintiffs' claims herein. Attached hereto marked Exhibit "H" and incorporated herein for all purposes are copies of March 17 and 26, 1986 letters with Notice of Oral Depositions attached.

J. After Plaintiffs did not receive Mrs. Hamilton's deposition and material exhibits and pursuant to the lead Plaintiff's recent death and the discovery of an actual conspiracy by Defendants to submit fraudulent testimony and documents in defense of this civil action, Plaintiffs moved for a continuance on April 15, 1986. Attached hereto

marked Exhibit "I" and incorporated herein for all purposes is a copy of the Plaintiffs' Motion for Continuance.

K. On April 21, 1986, the Court granted Defendants leave to file their Motions for Summary Judgment out of time, which motions were filed April 11, 1986.

L. On or about May 2, 1986, the Court's Clerk, Mr. Price, telephoned Mr. Hicks and told him the Court wanted to see all counsel of record the week of May 5, 1986. At that time Mr. Hicks registered his reservations based on his schedule about being able to attend except that the week of May 12, 1986 was available. Mr. Price stated that the Court want to meet the week of May 5, 1986, and set the conference for May 9, 1986. Mr. Hicks was relying on notice similar to Exhibit "B" in this regard since the case involved substantial Federal civil rights. In any event, based on the death of Mr. George W. Hamilton and the need to prepare

Mrs. Betty Hamilton as the lead Plaintiff and the discovery of the material documents, notes, diaries, etc., that were being prepared by Mr. Hamilton prior to his untimely death, Mr. Hicks would not have been ready to respond to the May 9, 1986 hearing on Summary Judgment. These considerations were some of the major reasons why the Continuance was requested.

M. On May 9, 1986, Mr. Hicks was his way to the meeting in Marshall, Texas when he experienced verifiable brake failure that caused him to telephone and inform this Court. The Clerk stated that the Court would not delay the "hearing" at which time Mr. Hicks inquired concerning the "hearing" versus "meeting." Mr. Hicks was informed that the Court was going to hear the Defendants' Motions for Summary Judgment without Mr. Hicks' presence and that the Court stated that Mr. Hicks had enough time to respond to

all motions and to complete discovery.

N. On May 9, 1986, counsel began preparing a Motion for Leave to File Plaintiffs' Response to Defendants' Motions for Summary Judgment Out of Time, and Order consistent with that Motion and a fifty-six (56) page Response to Defendants' Motions for Summary Judgment with accompanying exhibits and affidavits to Plaintiff Betty Hamilton and the Estate of Pearl Hamilton's representative in fact, Warren Harding Hamilton. Those Plaintiffs and Plaintiffs' representatives reviewed the documents, executed their respective affidavits and filed same with this Court on Wednesday, May 14, 1986, following the Friday, May 9, 1986, on which the summary judgment or dismissal occurred. Incorporated herein for all purposes is Plaintiffs' Motion for Leave to File Plaintiffs' Response to Defendants' Motions for Summary Judgment Out of Time, the appropriate Order and the Response with

accompanying Exhibits.

II.

Base on the foregoing chronology of events, counsel for Plaintiffs' failure to appear at the May 9, 1986 "hearing" was due to mistake, inadvertence, surprise, or excusable neglect and this Court should relieve Plaintiffs of the Summary Judgment against them. The foregoing does not indicate that Plaintiffs were merely delaying but that the schedule of the Court could not be reasonably met by Plaintiffs' counsel.

III.

Pursuant to Rule 60(b), this Court has the discretion to relieve the Plaintiffs from the Summary Judgment based on the Defendants' conspiracy to commit fraud, misrepresentation or other misconduct that plainly appears when reference is made to Plaintiffs' Response and accompanying exhibits. There clearly is no prejudice to Defendants and they have no pro-

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tectable interest in a judgment based on conspiracy, fraud and misrepresentation. Defendants have completed their discovery, none of their witnesses have died or moved away, and no undue amount of time has elapsed since judgment and Plaintiff's motion for relief.

IV.

Parties should not be punished for their counsel's neglect except in extreme and unusual circumstances. Hassenflue v. Pyke, 491 F.2d 1094 (5th Cir. 1974). Accord, Greater Baton Rouge Golf Association v. Recreation and Park Commission for Parish of East Baton Rouge, 507 F.2d 227 (5th Cir. 1975). Here, Plaintiffs' counsel complied with the Court's Orders heretofore and had been cooperative in discovery scheduling and complied with opposing counsel's discovery request; had engaged in extensive discovery; had already by motion notified the Court that additional

time was needed, especially since the major Plaintiff died five days after discovery began, and additional material matters were discovered after discovery began; had notified the Court of his difficulties in reaching the out of town "hearing," and, had requested the Court to grant leave to file with a quasi-exhaustive, relevant and material Response (with accompanying exhibits) to the Defendants' Motions for Summary Judgment Out of Time (three (3) business days out of time). Under these facts, the entry and maintenance of Summary Judgment against Plaintiffs is too harsh and produces an extreme and unexpected hardship that renders the judgment manifestly unconscionable. Silas v. Sears, Roebuck & Co., Inc., 586 F.2d 382 (5th Cir. 1978) (a clear record of delay and/or contumacious conduct is required to support the harsh remedy of dismissal). Accord, Humanetics, Inc. v. Kerwit Medical Products, Inc., 709 F.2d 942 (5th Cir. 1983).

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Here, the Defendants agreed between themselves and with R. G. Dougherty, to represent to the Court that Defendants had always considered the "TOBIN LINE" in assessing and collecting taxes. Plaintiffs have recently discovered that there is no such thing as a "TOBIN LINE" for taxation purposes and that said line was created to use in Court to mislead the Court and Plaintiffs. The supporting materials to Plaintiffs late Response to Defendants' Motions for Summary Judgment are essentially relevant to the legal issues as to discrimination based on Plaintiffs race and show a purposeful, selective, irrational distinction made concerning Plaintiffs and other citizens of the two Defendant Counties. Those supporting materials also show that Defendants behavior is so fraudulent that equity requires the summary judgment be set aside. Indeed, the Federal trial machinery was sabatoged and a "fair contest" between

the parties as intended by the summary judgment rules, was instead little more than an adjudication of a hypothetical fact situation imposed by Defendants' selective disclosure of misleading and fraudulent information. Rozier v. Ford Motor Co., 573 F.2d 1332 (5th Cir. 1978), rehearing denied 578 F.2d 871 (5th Cir. 1978).

WHEREFORE, premises considered, Plaintiffs request that this motion be granted.

Respectfully submitted,

HILL HICKS COLLINS
Attorneys and Counselors at Law

BY: Signed: Donald W. Hicks, Sr.
DONALD W. HICKS, SR.

Renaissance Place - Suite 530
714 Jackson Street
Dallas, Texas 75202
Telephone No. (214) 744-0255

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME the undersigned Notary Public oDonald day personally appearedW. Hicks, Sr., who being duly sworn by me and place upon his oath deposed and said that he is the attorney of record for Plaintiffs in the above styled and numbered cause and he has read the above and foregoing Plaintiffs' Motion for Relief from Judgment and that every statement contained therein is within his personal knowledge true and correct.

Signed: Donald W. Hicks, Sr.
DONALD W. HICKS, SR.

SUBSCRIBED AND SWORN TO BEFORE ME on the _____ day of _____, 1986, to certify which witness my hand and official seal.

_____
NOTARY PUBLIC in and for
DALLAS County, Texas

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

GEORGE W. HAMILTON, ET AL., Plaintiffs,	§
VS.	§
MORRIS COUNTY, TEXAS, ET AL., Defendants.	§

CIVIL ACTION NO. M-85-149-CA

MOTION FOR CONTINUANCE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the Plaintiffs and request a Motion for Continuance in the above-entitled and numbered cause. In support thereof, Plaintiffs would show the following:

I.

The parties have engaged in a good faith effort to complete discovery. However, due the death of Plaintiff George W. Hamilton, however, additional discovery is needed and additional time is needed for completion of said discovery. Plaintiffs would request that the Court grant a continuance from May 5, 1986, to at least ninety (90) days hence.

II.

Due to George Hamilton's death, Plaintiffs will seek to amend their complaint to reflect pre-death discovery, new theories of recovery, and to add additional and substitute parties.

CERTIFICATE OF CONFERENCE

Counsel of record for the Defendants have been contacted and have no objections to this motion.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs would request that the Court continue this matter, that the deadline for discovery and pre-trial submissions be extended and that this cause be set for trial at a time at least ninety (90) days hence.

Respectfully submitted,

HILL HICKS COLLINS
Attorneys and Counselors at Law

BY: _____
DONALD W. HICKS, SR.

Renaissance Place - Suite 530
714 Jackson Street
Dallas, Texas 75202
Telephone No. (214) 744-0255

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

GEORGE W. HAMILTON

vs. CIVIL NO. M-85-149-CA

MORRIS COUNTY, TEXAS et al

N O T I C E

The above styled and numbered cause is set for status conference in the United States Courthouse, Marshall, Texas, on Friday, January 10, 1986, at 8:30 A.M.

Lead counsel for all parties are required to attend.

Done this 13th day of December, 1985

BY ORDER OF AND FOR THE COURT

Murray L. Harris, Clerk

By: (Signed)

Deputy Clerk

Mr. Donald W. Hicks, Sr.
Renaissance Place - Suite 530
Dallas, Texas

Mr. George C. Dunlap
P. O. Box 50100
Dallas, Texas 75250

Mr. Robert W. Weber
P. O. Box 1049
Texarkana, Texas 75504-1049

Mr. Joe W. Lovelace
P. O. Box 546
Linden, Texas 75551-0546

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

GEORGE W. HAMILTON, JR. et al

vs. CIVIL NO. M-85-149-CA

MORRIS COUNTY, TEXAS et al

SCHEDULING ORDER

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, the following deadlines are hereby set:

1.	To amend pleadings; and to add additional parties	March 10, 1986
2.	To complete discovery	April 1, 1986
3.	To file motions	April 5, 1986
4.	To respond to motions	April 19, 1986
5.	To designate, exchange and file witness list	March 3, 1986
6.	To designate, exchange	

exhibit(s) and exhibit(s) list — April 15, 1986

7. Prepare and submit joint pre-trial order — April 15, 1986

Final pre-trial conference will be scheduled as soon as possible after April 15, 1986 and the case will be placed on the Ready for Trial List that date. If the attorneys feel a final pre-trial hearing is unnecessary, they must request in writing that the case be placed on the Ready for Trial List. However, after a case has been placed on the Ready for Trial List, no additional discovery or modifications to the Pre-Trial Order will be permitted, except under exigent circumstances and only upon written Motions and Order of the Court.

Motions pertaining to the above matters are unnecessary if accomplished within the deadlines imposed herein.

Attorneys are to familarize themselves with the Court's standing Orders on Discovery

and Pre-Trial Orders and to comply with the Orders. Copies of these Orders may be obtained from the District Clerk.

This schedule shall not be modified except by leave of the Judge or Magistrate upon a showing of good cause.

SIGNED this 23rd day of January, 1986, at Marshall, Texas.

BY ORDER OF AND FOR THE COURT

MURRAY L. HARRIS, CLERK

By: (SIGNED)

Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

GEORGE W. HAMILTON, BETTY L. HAMILTON §
AND GEORGE AND VERINE HAMILTON FOR THE §
ESTATE OF PEARL HAMILTON, DECEASED, §
Plaintiffs, §
§
VS. §
§
MORRIS COUNTY, TEXAS; MORRIS COUNTY §
APPRAISAL DISTRICT; TITUS COUNTY,TEXAS; §
TITUS COUNTY APPRAISAL DISTRICT; §
PAT BECK, INDIVIDUALLY AND AS FORMER §
ASSESSOR-COLLECTOR, TITUS COUNTY, §
JERRY CHAMBLISS, ASSESSOR-COLLECTOR, §
MORRIS COUNTY, TEXAS; B.W. SKIPPER, §
INDIVIDUALLY AND AS CHIEF APPRAISER, §
MORRIS COUNTY, TEXAS, §
Defendants. §

CIVIL ACTION NO. M-85-149-CA

PLAINTIFFS' RESPONSE TO DEFENDANTS'

MOTIONS FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

PLAINTIFFS, GEORGE W. HAMILTON, BETTY L. HAMILTON, and GEORGE and VERINE HAMILTON FOR THE ESTATE OF PEARL HAMILTON, DECEASED, submit herewith this their Response to Defendants' Motions for Summary Judgment pursuant to Rule 56c, Federal Rules of Civil Procedure, and would show:

I.

Plaintiffs herein named, based on the pleadings and depositions of parties, and other evidence produce during discovery, do allege that there are genuine issues as to many material facts and that the Plaintiffs, and each of them named herein, are entitled to a trial on the merits of their civil action and that Defendants are not entitled to judgment as a matter of law.

IDENTIFICATION OF PARTIES

This action was one brought by George Washington Hamilton and wife, Bettie L. Hamilton, Verine Hamilton, a sister of George W. Hamilton, and George W. Hamilton and Verine assert an action on behalf of the estate of Pearl Hamilton, their mother (all Plaintiffs being referred to as Hamiltons). George Washington Hamilton died February 18, 1986, four days after giving over nine hours of deposition testimony in this civil action. A suggestion of death has been filed with this court, however, Defendants have refused Mrs. Hamilton's application to administer her deceased husband's estate and Mr. Warren Harding Hamilton has been refused successor letters of administration in the same county (Morris) wherein George Washington Hamilton qualified as administrator over Pearl Hamilton's estate.

There are two groups of Defendants:

(1) Morris County Appraisal District, B. W. Skipper, Individually and as Chief Appraiser, Morris County, Jerry Chambliss, Assessor-Collector, Morris County, and Morris County, Texas (referred to as Morris County Defendants), and

(2) Titus County, Texas, Titus County Appraisal District, Pat Beck, Individually and as former Assessor-Collector, Titus County, Texas (refferred to as Titus County Defendants).

II.

It is disputed that the "Tobin Line", created in December, 1984, specifically to use against Plaintiffs, is the boundary historically used by Morris and Titus Counties in fixing the tax situs of property and it is alleged that the usage of the Tobin Line to tax Plaintiffs is a custom directed toward Plaintiffs based solely on their race which

custom has caused an inability to resolve the issue over ten (10) years. It is also disputed that R. G. Dougherty has been officially requested and whether it is legal to relocate the boundary line in such a fashion as to discriminate against Blacks, particularly Plaintiffs. It is proved by the following depositions and authenticated documentation and official acts that the Dougherty survey is fraud on this court and the people of Morris and Titus Counties and is the sort of conspiracy between the governmental entities herein involved that has caused Plaintiffs' civil rights to be abridged and the type of governmental activity that should not go unpunished.

III.

The Fourteenth Amendment gives Plaintiffs the right to enjoy the same citizenship rights offered by a State to other citizens. Other Morris County Citizens enjoy

the 1875 legislatively created common county boundaries, choose to live either in Morris County or Titus County and exercise their citizenship rights in their chosen counties of domocile without reference to the "Tobin Line" which is a "calculated line" (Deposition of R. G. Dougherty p.41) and which line has not been located by boundaries or features on the ground from an actual ground survey (Dougherty, p.14). Use of the "TOBIN LINE" only against Plaintiffs and their race, in the face of all the facts and circumstances and under the present State of Texas law, is a denial of equal protection and due process (substantive and procedural) and infringes on Plaintiffs' associational freedoms.

IV.

Here there is no question but that the respective Counties' employees' conduct were their Counties' respective policies.

Execution of Morris and Titus Counties' policy of using the "TOBIN LINE" only against Blacks and, particularly against the Plaintiffs, has caused Plaintiffs serious bodily harm and has caused the death or substantially contributed to the deaths of George Washington Hamilton and his mother, Pearl Hamilton.

V.

In December, 1984, Defendants knowingly conspired to create an explanation for their denial of Plaintiffs' civil rights and have created a lie for boundary purposes called the "TOBIN LINE", which line was just created by a **"hired gun"** surveyor, R. G. Dougherty. Defendants have wholly failed to use good faith in the performance of their duties.

VI.

If there is a "TOBIN LINE", the County Defendants maintained a "custom or usage" of unequally applying the "TOBIN LINE". The

individual County employees' officials' authority to use the "TOBIN LINE" in taxing only Plaintiffs and their race was never questioned by the respective County Commissioners Court (their governing bodies) and thus represented official policy of the Counties. The governing bodies would have known of the unconstitutional violations if they had properly exercised their responsibilities under state law, especially here where the violations were so persistent and widespread against the Black population and the issue pointing this out was frequently brought up by either Plaintiffs or Defendants and, substantial amounts of other evidence openly existed. These factors warrant a finding that the County governments knew of this treatment of Blacks and, in particular, the Plaintiffs and that, indeed, the objectionable conduct had become a customary practice among the respective Counties' employees.

BACKGROUND

Plaintiffs bring this civil action pursuant to 42 U.S.C. § 1983 complaining that the failure of Morris and Titus Counties to follow the law in implementing or executing boundary changes relative to Plaintiffs is based on their race and hence unconstitutional action and that Defendant Counties have implemented or executed a policy statement or decision officially adopted and promulgated by those bodies' officers. Plaintiffs further claim that the constitutional deprivations of due process and equal protection of the laws and customs are visited pursuant to Defendants governmental customs even though such customs have not received formal approval through the bodies' official decisionmaking channels because the practices of the individual Defendants (who have been in office since the begining of Plaintiffs' ordeal) are so permanent and well

settled as to constitue a 'custom or usage' with the force of law. Plaintiffs allege that the boundary issue that has continued over ten (10) years and that has, according to Plaintiffs, caused the death of or substantially contributed to the death of two from among them, are based on acts of indifference and conspiracy that may fairly be said to represent official policy for which the two Counties (Morris/Titus) might be held responsible. See generally Monell v.New York City Department of Social Services, 436 U.S. 658, 690-91 (1978); Bennett v. The City of Slidell, 728 F.2d 762 (5th Cir. 1984), on rehearing aff'd in part and rev'd in part, 735 F.2d 861 (1984); Webster v. The City of Houston, 735 F.2d 838 (5th Cir. 1984), aff'd in part, rev'd in part and remanded, 739 F.2d 993 (1984); Languirand v. Hayden, 717 F.2d 220 (5th Cir. 1983); Garris v. Rowland, 678 F.2d 1264 (5th Cir. 1982);

Turpin v. Mailet, 619 F.2d 196 (5th Cir. 1980).

FACTS ESTABLISHED BY DEPOSITIONS

DEPOSITION TESTIMONY OF R. G. DOUGHERTY REGISTERED PUBLIC SURVEYOR AND DEFENDANTS "EXPERT"

R. G. DOUGHERTY testified:

1. That he was fifty-nine (59) years old and had lived in Northeast Texas since 1936 and that he had been a licensed public land surveyor since 1959 and that he had conducted from 8,000 to 10,000 surveys and that his answers to the questions propounded to him would be based on his education, training, experience and upon the reasonable probability of his profession (pp.5-8)

2. That, in contrast to the old days, the same surveying operations are

done with more accurate instrumentation containing computers and light beam transmitters to receive information and obtain distances (pp.8-11)

3. That the results from the use of the old method of transit and steel tape or "CHAIN" depended on the technique, the conscientiousness of the surveyor that was using it and that results would vary from surveyor to surveyor and that the potential for substantial errors were possible (pp.10-11)

4. That he conducted Dougherty's Survey (Defendants' Dougherty Exhibit 4) in 1984 at the request of Wayne Landrum, who was working with both the Titus and Morris County Appraisal Districts, and the Commissioners Court, and County Court of each County (p.12)

5. That he was asked by Mr. Landrum to determine the County line with respect to the location of George Hamilton's home and that he was given the style and the court and a volume and page where George Hamilton had acquired his property (p.12)

6. That he used topographical maps of, among others, Cason (Defendants' Exhibit 1) and a composite map of Morris and Titus Counties according to Edgar Tobin's Aerial Survey (Defendants' Exhibit 2) (p.12-13)

7. That Edgar Tobin was a private mapping company in San Antonio, Texas that prepared from aerial photographs linked with original surveys at the General Land Office, with information the County Clerk's

offices' and tax offices to compile private ownership of land (pp.13 - 14)

8. That he did not know whether the Edgar Tobin group ever located any boundaries or features on the ground from actual ground surveys (p.14)

9. That Defendants' Dougherty Exhibit 4 actually charted the boundary lines relative to Mr. Hamilton's property (pp.20-25)

10. That a true, correct, accurate County line between Morris and Titus County is depicted on Defendants' Dougherty Exhibit 4 and that the line between Morris County and Titus County is the exact location of the County line (p.26)

11. That, in spite of his exact depiction of the Morris County/Titus County boundary on Defendants' Dougherty Exhibit 4, he believes

that the Hamilton Property is in Titus County and that he bases that inconsistency on the "TOBIN LINE" as the true County line rather than his exact depiction (pp.25-28)

12. That, he relied on the 1890 survey that was done by W. S. Connor and, in particular, he re-established Connor's line from work he had done up in the north end of Titus County and that, although, he considered the original Commission survey, he felt it important to re-establish W. S. Connor's line since it was the only survey he considered having ever actually run on the County line (pp.31-34). See Plaintiffs' General Land Office File, Exhibit "B" where it is disclosed that Morris County did not commission W. S. Connor to establish a new County boundary but to better mark the 1875 boundary

survey done by James Henderson who actually did the "on ground survey" of the Morris County boundary that established Shady Grove Road as a common boundary between the two Counties. In fact, the Morris County Commissioners ordered W. S. Connor in from the fields when they learned Titus County's Surveyor James Turner, who was with Connor, attempted to establish new boundaries using the same arguments Dougherty presently advances. See also the Attorney General's opinion in that file on Morris County that shows Dougherty's survey is irregular and illegal. See also Jones vs. Powers, 65 Tex. 207 Sup. Ct. 1885).

13. That he could remove all clouds and doubts using a survey that had never been completed and that did not

cover the southern portion of the boundary (or the point here in issue) (p.2, Defendants' Exhibit 1)

14. That neither County Commissioners Court (Titus/Morris) entered an order commissioning him to perform a survey to establish new common boundaries or to relocate old common boundaries (p.35)

15. That he is aware of the calls in Morris County and Titus County that say Shady Grove Road is a County division (boundary) line between the two Counties and that those calls are obviously in error based on the 1890 Commission, which Commission survey was not completed (p.37)

16. That, even though no reference to same is recorded on his survey map (Defendants' Dougherty Exhibit 4), he used the 1875 legislative act creating Morris County rather than

the 1890 Commission by W. S. Connor which latter commissioned survey is referenced on said Defendants' Dougherty Exhibit 4 (pp.38-39; Defendants' Dougherty Exhibit 4). Plaintiffs note at this juncture in Dougherty's deposition summary that his report (Defendants' Exhibit 1) directly disputes Dougherty's allegation that he employed the 1875 legislative act. Dougherty's Exhibit 4 has absolutely no reference to the 1875 Legislative Act and no line depicted thereon refers to such Act, nor does the Defendants' Exhibit refer to the 1875 Legislative Act.

17. That by his Exhibit 4, with the black square spot referencing the Hamiltons' home, every house from Dougherty's Titus County Line back to the "TOBIN LINE" would be in

Titus County (pp.40-41)

18. Plaintiffs note that Dougherty lied about the "B" reference on page 41 of his deposition. We asked whether "B" stood for "Boundary" on Defendants' Dougherty Exhibit 4, Dougherty responded "No. That 'B' is a referral from my report." Plaintiffs note that Defendants' Exhibit 1, page 2, last paragraph, states that "B" establishes the County line in the vicinity of Cason which was the second step in Dougherty's work and actually the goal of his project.

DEPOSITION TESTIMONY OF PAT BECK

ASSESSOR - COLLECTOR - TITUS COUNTY

PAT BECK testified:

1. That he has resided in Titus County sixty-one (61) years (p.5)
2. That he became Titus County Tax

Assessor-Collector January 1, 1968 (p.6)

3. That he remained Assessor-Collector until December 31, 1984 (p.9)

4. That it happened to come to his attention that Plaintiffs' property was within his district about 1973 (p.12)

5. That Deputy Tax Assessor Phil Cromwell was assessing property for the the entire County in about 1973 when he found a "new house" owned and built by Plaintiff George Hamilton, which property was placed on Titus County Tax Rolls in 1974 (pp.13-14)

6. That he had always taxed unimproved property within his jurisdiction (pp.13-14) but had never, until 1974, taxed the subject matter property

7. That he had taxed Pearl Hamilton prior to 1973 and that she had paid

those taxes as far as he knows (p.14) (Note: There is absolutely no proof that this is true. Titus County records do not bear this out. Morris County records prove that Pearl Hamilton paid taxes in Morris County prior to and after 1973)

8. That his office had a practice and procedure, once it received a protest from a taxpayer, of providing the taxpayer with a notification that the taxpayer had an opportunity to contest the valuation, the appraisal or inclusion on the tax rolls (p.20)

9. That sometime before June 24, 1975, and pursuant to said practice and procedure, the County Clerk - Allen La Prade - notified Plaintiff George Hamilton and that Phil Cromwell, on that notification, wrote that no valid reason existed for removing

Mr. Hamilton's property from the Titus County tax roll or to reduce its value (pp.19-22 Plaintiffs' Exhibit 6)

10. That he received Plaintiffs George and Betty Hamilton's written protest from Plaintiffs' attorney September 22, 1975, stating, inter alia, that the Hamiltons would only pay taxes only upon a successful lawsuit to collect back taxes (p.17 See p.56; Plaintiffs' Exhibit 5)

11. That Plaintiffs' attorney wrote another protest letter dated October 14, 1974, and received by Titus County Defendant Pat Beck and addressed jointly to Morris County Defendant Jerry Chambliss (pp.22-25; Plaintiffs' Exhibit 7)

12. That Titus County does not have the authority and would not attempt to tax property not within its juris-

diction (p.40)

13. That he was not aware of any agreements that would allow Titus County to tax property outside Titus County boundaries and vice versa (pp.44, 54)

14. That he is sure there is a special procedure or formality that has to be complied with in order to add a person to the tax roll and that those procedures are supposed to be the same for each county; that they are based on law and that he did not know the special procedures to add to the tax roll; that he followed the procedure he knew, which was to send notice to the taxpayer that he was being placed on the tax roll; and that he never heard of Shady Grove Road until he saw it on Dougherty Exhibit 4, February 14, 1986 (pp.44-54)

15. That he has never spoken to Mr. or Mrs. Hamilton and that he was informed Mr. or Mrs. Hamilton were in his office but he did not see or speak with them (p.53)

16. That he did not know that the Hamilton's homestead had been located in the same spot since 1956 and that the reason why Titus County Assessor-Collectors had missed the Hamilton's property was because they had never gone down to look and there would have been no reason not to pick up said homestead in the Titus County taxing jurisdiction (pp.80-81)

17. That he knows discriminating on the basis of race is against the law and that he would admit to such discrimination if he were guilty of same (p.82)

18. That he was aware that Mr. Hamilton

had told his office that Morris County had assessed tax on his land and that he had paid such assessment (pp.54-55)

19. That even though he had knowledge of the Hamilton's payment of the Morris County tax assessment he had no special procedure to follow to insure that the taxes were paid in Titus County (the alleged proper County) (p.55)

20. That he did not expect the Hamiltons to pay taxes in two Counties (p.56)

21. That, in spite of Plaintiffs' Exhibits 5 and 7, he had no knowledge that the Hamiltons stated they had always paid taxes in Morris County and that the prior owners of the Hamiltons' property paid taxes in Morris County (p.56)

22. That no valid reason exists for Titus County taxing the Hamiltons and not taxing all taxpayers similarly situated and that the Hamiltons' situation was unique (pp.56-57, 68-71)

23. That neither Morris County nor Titus County have re-established their common boundary lines (p.71)

24. That after some 17 years as Titus County Assessor-Collector, he is not familiar with dividing markers between Morris and Titus Counties (pp.49-50)

25. That he was his own boss except that the Commissioners Court approved his tax roll and request for help and that the Titus County Commissioners Court was aware of the Hamiltons' problem and that "CH", representing Morris County

Courthouse Annex, is physically located within Titus County according to Defendants' Dougherty's Exhibit 4, but said Courthouse Annex would be the location for the Titus County taxpayers to vote (pp.61-63)

26. That there existed a written manual prepared by the state that he did not routinely follow in the performance of his duties and that he could not follow the manual and that if he needed to do something to comply with the law, the County Commissioners would not back him up on it, even though they knew it was required by law (pp.9, 65-67)

DEPOSITION TESTIMONY OF B. W. SKIPPER
ASSISTANT CHIEF APPRIASER OF TITUS COUNTY
FORMER CHIEF APPRAISER OF MORRIS COUNTY

B. W. SKIPPER testified:

1. That he was Chief Appraiser for

Morris County, Texas from February 1, 1982 until September 14, 1985 and that he began at the Assistant Appraiser for Titus County January 2, 1986 (p.12)

2. That, from 1972 to February, 1982, he was Assessor-Collector with Daingerfield - Lone Star Independent School District, and that, from August, 1970, to 1972, he was City Coordinator for the City of Lone Star, Texas (pp.16-17)
3. That he has a Bachelor's Degree in Public Administration and a Masters Degree in Sociology and Public Administration (p.18)
4. That he began as the Chief of Police of Lone Star in 1963 or 1964 and remained in that position for six years (p.19)
5. That he was born in Titus County and

lived and grew up west of Cason (p.21)

6. That he was required to prepare and certify to the Morris County Assessor-Collector the Appraisal roll for the Morris County Appraisal District (p.21)

7. That, in the course of that certification, he probably certified an appraisal roll to the Assessor-Collector that excluded Plaintiffs (p.22)

8. That the County lines, as far as he knew, were determined by the State Legislature and that the process for making that determination was probably made long before his time (pp.22-23)

9. That the State placed a marker, bearing Titus on one side and Morris on the other in the location of

Highway 11, as shown by Defendants' Dougherty Exhibit 4 (pp.24-31). At this point the Court should note the witness' reluctance to identify the marker based on the obvious conflict with Dougherty's survey Plat - Defendants' Dougherty Exhibit 4.

10. That as an appraiser, he has no authority to question the boundary lines of counties established by the State (pp.30-32)

11. That the Hamiltons were dropped from his appraisal roll because his records reflected that property was along the line of Morris and Titus and he had to determine where that property was located and why it was on the Morris County rolls (p.32)

12. That he had to determine why the Plaintiffs' property was on the Morris County rolls because the Morris County and Titus County

Appraisal districts hired a supporting company to work and help appraise the property within Titus and Morris Counties (p.33) and the one company (Southwestern Appraisal) happened to be hired by the two Appraisal Districts, independently (p.34)

13. That when Southwestern Appraisal did not put the Hamilton Property on the Morris County appraisal roll, he went back and physically checked that piece of property and discovered it was on the west side of the Tobin marked, designated line that he had used for years and years in the past as a County line (p.35). It is significant to note that the "TOBIN LINE" was created and could only have been created by Dougherty in 1984, inasmuch as he stated on page 14 of his deposition that

"whether the people from Edgar Tobin had ever located any boundaries or features on the ground from actual ground surveys, I do not know." Further, the surveyor stated he had no knowledge if Mr. Tobin ever surveyed any County lines and that the maps were originated to serve the oil industry for base ownership maps throughout the State (p.14; Dougherty's Deposition)

14. That he knew the Plaintiffs' property was on the roll received from the Morris County Tax Assessor and Collector (p.36)

15. That Southwestern Appraisal told him that the Hamiltons' property had already been appraised and placed in Titus County according to the Tobin Map and that this action was not commissioned by County Commissioners Courts of the two Counties nor the

State Legislature (pp.36-37)

16. That in 1981, he requested the 1981 Tax Assessor-Collector rolls as inventory to begin his job as Chief Appraiser in the Appraisal District and that he has no knowledge as to whether the Hamiltons were on the Assessor-Colectors rolls prior to 1981 (pp.39-40)

17. That Mr. Hamilton never filed a formal protest with the Appraisal District established in 1981 (pp.39, 41)

18. That the County Commissioners Court could question any portion of his work as Chief Appraiser, as well as any taxing unit within the Morris County Appraisal District (pp.41-42)

19. That Southwestern Appraisal (the private appraisal company was to "evaluate" all property within the

County, which property was given to them by Skipper (pp.53-54, 64)

20. That the only authority Southwestern Appraisal had was to go out with the roll given them and appraise property (p.54)

21. That the reason he accepted Southwestern's non-appraisal of and conclusion that the Hamiltons' p - perty did not lie in Morris County is because Southwestern Appraisal supervisor Howard Sloan stated, upon Skipper's inquiry, that the property had been "evaluated" in Titus County (pp.54-55, 65)

22. That the "TOBIN LINE" is one that is used to mark the lines within the highway boundaries going north and south, throughout the County (p.65)

23. That, in 1970, he had knowledge that the Hamilton property was located in Titus County due to the re-

appraisal done for the Daingerfield - Lone Star Independent School District when the Daingerfield - Lone Star Independent School District was annexing the Cason Independent School District (p.60)

24. That the situs of property depends on him (pp.62-63)

25. That, in conducting his inquiry on situs of the Hamiltons' property, he did not inquire on where taxes had been paid in prior years (p.61)

26. That when he contacted the Chief Appraiser of Titus County, he was informed that the Hamiltons' property was on the Titus County appraisal roll and that the Titus County Chief Appraiser received the property the same way Skipper did (as inventory from the Assessor-Collector, Pat Beck) (pp.67-68)

27. That he never sent a notice to the Hamiltons informing them of the decision to drop them from or not include them on the Morris County Appraisal Districts' roll (pp.71-72) and, to his knowledge, there was no requirement that a notification be sent to the Hamiltons (p.72)

DEPOSITION TESTIMONY OF JERRY L. CHAMBLISS
MORRIS COUNTY TAX ASSESSOR - COLLECTOR

JERRY L. CHAMBLISS testified:

1. That he grew up in Morris County and has been a resident of that County for fifty-one (51) years and that he has been the Morris County Assessor-Collector for twenty-nine (29) years (pp.5-6)
2. That the Hamiltons rendered their taxes to his office on forms provided by Morris County through the mail and were placed on the Morris

County Tax rolls based on prior tax rolls (pp.6-7)

3. That he had been Assessor-Collector longer than the Hamiltons owned the property at issue (pp.7-9)

4. That Plaintiffs' Exhibit 1 was prepared by him and lists George Hamilton's tax receipts from Morris County covering 1963 through 1980 (pp.8-12; Plaintiffs' Exhibit 1)

5. That the Assessor-Collector determined properties to be taxed within the County by checking the County "Deed Records" and through information provided by the landowners, as well as bringing forward prior tax rolls annually (pp.11-13)

6. That, as Assessor-Collector, he inherited the prior Assessor-Collector's tax rolls which rolls have been relied upon for all the years prior to the establishment of

the current "Appraisal Districts" and that Morris County acted upon those tax rolls as if they were, in fact, true (pp.13-15)

7. That, although Defendants' Dougherty Exhibit 4 shows the Titus County/Morris County Boundary Line over 1,833 feet east of the Hamiltons' property, Morris County has taxed properties west of that Boundary line to what is called the "TOBIN LINE", which, under his understanding, is the recognized County line (pp.15-26)

8. That there is not an agreement between Morris and Titus Counties to determining who is responsible for taxing the Hamiltons' property and that such a determination would probably be resolved by conversations with the taxpayer and the Counties involved (pp.17-18)

9. That there is no authority for or agreement between the two Counties allowing Titus County (and vice versa) to collect taxes on taxpayers living in Morris County (pp.19-20)

10. That, even though Defendants' Dougherty Exhibit 4 has established a County boundary line 1,833 feet east of the "TOBIN LINE", he assesses taxes for Morris County using the "TOBIN LINE" as the Counties' Common Boundary line (pp.22-26)

11. That he prepares the voter registration roll for Morris County by voter registration application and that there is no relationship between the tax rolls, or the appraisal rolls and the voter registration rolls (pp.26-27)

12. That there is no voting precinct of Morris County located in Titus

County but that, pursuant to Defendants' Dougherty Exhibit 4, Morris County Precinct 102 as referenced by "CH" (representing the Morris County Courthouse Annex) is physically within Titus County (pp.27-29)

13. That there is no reason why Morris County citizens would have to go into Titus County to vote and that he does not know any Morris County voter that goes into Titus County to vote (pp.29-30)

14. That he issues voter registration certificates for Morris County residents once the resident executes a voter application and signs a certification that he is a citizen of the United States, a resident of Morris County and has not been convicted of a felony, and has not been declared mentally incompetent, and

acknowledging that giving false information is a felony (p.30)

15. That he accepts voter registration certificates on the certification and presumes the truthfulness of the certification (p.31)

16. That he mailed Plaintiffs George W. and Betty L. Hamilton each a voter registration card from Morris County, which cards are valid from March 1, 1986 to February 29, 1988 and apply to Precinct 102 (pp.31-33; Plaintiffs' Exhibit 2)

17. That he has prepared precinct lists for 102 for 1984 and 1985 which he identified as Plaintiffs' Exhibits 3 and 4, respectively, which lists include George W. and Bettie L. Hamilton (pp.33-37; Plaintiffs' Exhibits 3 and 4)

DEPOSITION TESTIMONY OF

GEORGE WASHINGTON HAMILTON

GEORGE WASHINGTON HAMILTON testified:

1. (a) That he was born December 17, 1931, and that he completed high school at Rhodes High, Daingerfield, Texas, and that he had worked for the Federal Government thirty-three (33) years and that he had served in the Korean Conflict in France, and that he knew B. W. Skipper when they were both relatively young when Skipper would visit his grandfather's house just above where the Hamiltons lived at that time, and that Plaintiff and Skipper knew each other professionally

(b) That he had been registered to to vote in Morris County since the poll tax was abolished, and the last time he voted in Morris County was in 1985 in a special election having

to do with some of the statewide amendments; and that he was appointed to fill the unexpired term of a school board official and ran unopposed in the next regular election around 1976 or 1978 (pp.8-11, 16-17, 84, 86, 88, 113-114, 320-323)

2. That he knows where the Morris County line is based on his reliance on the Deed Records and his Warranty Deed (p.22)

3. That if, in fact, the Counties prove legally that his property is within Titus County he would have no alternative but to abide by what would be "official" (pp.22-23) however, that he continued to perform all other citizenship functions such as voting in Morris County's Precinct 102 (pp.107-112, 191-212)

4. That the original tract of land to his mother, according to the deed as

he understood it, stated that the land he presently owned is in Morris County, Texas (p.28)

5. That Mr. Cole is a white citizen of Morris County who lives on the east side of Shady Grove Road in the area where he lives, but that Mr. Cole is not treated by the taxing authorities the same way that Mr. Hamilton and other African Americans are treated (pp.33-34, 158-59, 167, 231)

6. That Southwest Title Company had checked his land title and that he relied on the history of his church records when it was organized and continuing through the years in the name of "Shady Grove", how it came into prominence and all that, and that that history came from the church records and that he referred to the Texas Almanac and found out

a survey in the State Court lawsuit on the proper taxable situs issue (pp.184-85) and that he knew a survey would not be fair and that he didn't trust it (pp.186, 237-238) and that the general attitude toward resolution of the problem was one of not caring (pp.177-181, 190), and avoidance by not corresponding (p.279)

9. That the services he received in the fifty-four (54) years he had been in Morris County at the location in question, or at that particular vicinity in Morris County had been provided by Morris County (pp.192-93)

10. That Mr. Cole, who is centered in the same vicinity and who is white, was never included on the property tax rolls of Titus County, that Plaintiffs never voluntarily ren-

dered their property for taxation to Titus County (pp.200, 249)

11. That there have been no special elections saying that people taxed in Titus County can vote in Morris County (p.203)

12. That his mother relied upon the F.H.A. title opinion rendered by O. G. Stanley (p.213) who was the designated attorney for the Farmers Home Administration in Morris County, Texas, and that Mrs. Robby Mitchell was the supervisor at that time (pp.215-16)

13. That Mr. Stanley, subsequent to that title opinion being issued by him as a F.H.A. attorney, subsequently represented Morris County against Mr. Hamilton in 1983 in a suit to establish the proper tax situs or boundary with respect to the subject property (pp.162, 165, 217)

14. That the African American Community in Morris County, Texas had absolutely no political clout and that he did not trust the people that run Titus County having been involved over the years, that no one was interested enough to care for the Hamiltons' interest, only to promote their own, as has been exhibited over the last ten years or so and that his mother, prior to her death attempted to mortgage her home with respect to F.H.A. in Titus County but was told she had to go to the F.H.A. Morris County, Route. (pp.129-137, 154-157, 213-216, 217-22)

15. That he did not feel that the survey performed by Mr. Dougherty was performed in good faith based on its encompassing hundreds of acres of

property everybody knows is in Morris County and that he felt, in order to make good on the claim of the Hamiltons' being in Titus County, the survey went beyond the bounds of reason and because of people behind it, just to get Hamiltons in this to use that as a basis convincing him that he was in Titus County and that the case should have been assigned

19. That, to begin with, he had a low absentee rate at his job except that as the years went by that absenteeism increased (pp.239-240)

20. (a) That he had his blood pressure medicine changed and that he had suffered long-term usage of the blood pressure medicine (pp.240-41); that Dr. Buddy Smith told him the effects of the long-term usage and increased dosage of the blood

pressure medicine on his health, and that Dr. Smith told him that he was human and just like any other man, and being married, he told him of taking the blood pressure medicine (pp.241-44, 290)

(b) That taking the blood pressure medicine for prolonged time caused a strain on Plaintiff's marriage and that he would have to take the medicine for the "rest of his life" and that it was beginning to mentally affect him (pp.242, 291-292, 300-310)

21. That he was 6'1" and weighed approximately 176 lbs., and that he was not overweight and that he had never had any medical problems of any magnitude other than light headaches prior to 1974 (pp.242-43) and that the only bad habit he had was smoking which habit had quit

until this lawsuit (pp.287-290)

22. That the State Tax Attorney advised Titus County to drop their suit against Mr. Hamilton in 1981 and that Plaintiffs felt that as citizens of Morris County, they should have been protected from this situation by Morris County, however, Morris County left Plaintiffs "out in the cold" on their own (pp.232-235)

23. That he has lost faith in his local government relative to him and this situation and feels discriminated against base on past general history as well as the specific history of his case and the lack of political opportunity (pp.315-316, 324)

24. That Cason is a close knit community and that the elders in the community know the common boundary between the Counties to the Shady Grove Road and

that the Black community has formed an opinion that Plaintiffs might as well give up "they say we are going to have to do what we are told to do"

25. That he believed that Titus County's Contentions concerning the boundary dispute is based solely upon Plaintiffs' race and that he based that opinion upon their attitudes toward Plaintiffs beginning in 1974 even up to the Present; that Titus County disregarded Plaintiffs' tax situs and the records that reflected Plaintiffs' location; and that Titus County has exhibited a total disregard for the records as presented to them and how evident the picture was to Plaintiffs based on the official records and the similar situation of Anglo families not having to suffer this treatment (pp.39-46, 71-75,

231).

DOCUMENTS SUBMITTED IN SUPPORT AND AS EXHIBITS TO THE DEPOSITION OF GEORGE WASHINGTON HAMILTON

26.a. Three Warranty Deeds located at Vol. 56, page 626, and Vol. 83, page 294, Deed Records, Morris County, Texas, marked Titus Defendants' Exhibit 2

26.b. Mr Hamilton's Response to the surveyors' report of R. G. Dougherty consisting of figures not drawn to scale locating homes of neighbors and boundary lines, drawn and prepared by Mr. Hamilton (Defendants have the original map) (pp.257, 262-300)

26.c. A General Warranty Deed from J. W. Wardlow and Amanda Wardlow of Morris County, to W. M. Cason of Morris County, dated December 14, 1877

26.d. A Joiner-North Cason Block, showing Titus and Morris Counties (pp.257-258)

26.e. In March 27, 1980, letter to the Department Chief Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. appearing on Morris County letterhead, which disclosed to the Department of Justice number of registered voters and estimated population by race in each proposed voting precinct and which discloses that voting precinct No. 102 came to a total of 428 people, of which 95 are Anglo, 333 are African American (p.257)

26.f. A number and percentage of registered voters showing "Areas of Minority Concentration" (p.257)

26.g. A final title opinion dated September 20, 1972, to loan applicant, Pearl Hamilton, showing the County of the property covered by the opinion to be Morris County, Texas, and signed by O. G. Stanley

26.h A real estate deed of trust for Texas on United States Department of Agriculture-Farmers Home Administrative Form FHA 477-1 TX REV. 2-1-77) between Pearl Hamilton and others, which shows Morris County as the situs of the subject matter property and recorded in Morris County Deed of Trust Records at Vol. 29, pages 271-274 (pd.262)

26.i. A real estate deed of trust by George W. and Betty Louise Hamilton on a half acre of land signed December 1st 1971 (pp.264-265)

26.j. March 7, 1984 letter to Mr. Hamilton from James L. Clark informing him of a meeting at the store in Cason on March 13, 1984, at 4:00 P.M , at the intersection of State Highway 11 and FM 44 to study the matter and see if they could settle it (p. 256)

26.k. February 7, 1983 letter to George Hamilton from Edwin R. York, Jr., as

Delinquent Tax Attorney for Titus County (p.272)

26.l. Sixteen pieces of correspondence from Titus and Morris County including April, 1986 and February, 1986 delinquent tax notices from both Counties; a November 8, 1984 delinquent tax letter from Titus County Attorney, Edwin R. York, Jr.; a November 1, 1984 delinquent tax letter from Edwin York in behalf of Titus County to George Hamilton; a February 7, 1983 letter from Edwin R. York, Jr., as Titus County Delinquent Tax Attorney to Pearl Hamilton; a July 12, 1985 delinquent tax letter to Pearl Hamilton's Estate, c/o Verine Hamilton from Edwin R. York, Jr. (pp.271-272)

26.m. Five pages of Statements of Delinquent taxes from Titus County Tax Collector, dated November 13, 1985, covering George Hamilton (p.272) and covering the year 1985 against Pearl Hamilton's Estate, c/o Verine Hamilton, and a statement of total

taxes levied in 1985 against George Hamilton by Titus County Assessor-Collector (p.272)

27.a. Modified Order Granting Letter of Administration to George W. Hamilton over his deceased mother's (Pearl) estate (p.265) (Received in mail subsequent to Order in 27.e. below and entered sua sponte

27.b. Application for Letters of Administration in Civil Cause No. 3696, Morris County Court (p.265)

27.c. Copy of Letters of Administration (p.265)

27.d. Certificate of Death - Pearl Hamilton (p.265)

27.e. Order Granting Letters of Administration in Civil Cause No. 3696

28. Copy of Deed of Trust from J. W. Boyd and wife, Mary F. Boyd to Dennis Shirk - intended to help identify what is known as "Shady Grove Road" and "County Road" (p.266)

29.a. December 20, 1984 letter from Dr. Buddy R. Smith, M.D. stating that he had been

followed since 1979 for Essential Hypertension. In both... worry and chronic anxiety were strong contributing factors. Hypertension has persisted...[and, at that time] require[d] three (3) medications for control of his hypertendion. Mrs. Hamilton required two (2) medications... (pp.266-267)

29.b. February 5, 1985 letter from Dr. Buddy L. Smith, M.D. stating that he has seen client numerous times in past years for hypertension 30. Letter from Harold Nix dated December 30, 1981 to McCreary, Huey & Vaselka concerning Plaintiffs being sued in CC No. 16,180 for non-payment of Titus County (p.272)

31. HISTORY OF SHADY GROVE CHRISTIAN CHURCH *** OCTOBER 6, 1963 (p.263)

32. Letter dated March 19, 1985, from Dr. Buddy Smith to Joe Skipper suggesting that Bettie L. Hamilton be excused from jury service in Morris County, Texas (Deposition of George Hamilton P.256)

DEPOSITION TESTIMONY OF BETTIE L. HAMILTON

(NOTE: This deposition has not been returned for Mrs. Hamilton's Signature, review, additions, supplementation, etc.)

BETTIE L HAMILTON testified:

1. that Billy J. Thompson, Marvin Traylor, Sammie L. Spraglin, and Ethel Smith, among others, live, according to Defendants' Dougherty Exhibit 4, in Titus County, that their location is exhibited by a box on that Exhibit 4, which is attached to their respective affidavits submitted in support of her testimony and Plaintiffs' contentions (Deposition of Bettie L. Hamilton with said Affidavits as Exhibits) (Note that rather than initial the area of residency, affiants symbolized it by boxes.)

2. that she and her husband were politically active in Cason, Morris County, Texas (Deposition of Bettie L. Hamilton)

3. that since events leading to this lawsuit, her husband had become consumed and, she believes, mentally affected in addition to being physically affected based on his preoccupation to resolve the taxable situs issue (Deposition of Bettie L. Hamilton)

4. That her husband dealt with the boundary problem day and night writing notes, opinions, diaries, reasearching the law and that their relationship substantially suffered and that he could not be as political as he wanted to with the issue of domicile pending (Deposition of Bettie L. Hamilton)

5. (a) that, in particular, the tension of trying to remain citizens of Morris County where they grew up, had friends (white and Black), where her husband served on the Daingerfield Independent School District, and where her husband was trying to organize the Cason community for greater political power where people knew him, where they have exercised all citizenship rights since birth,

where they voluntarily chose and built their home, caused both to acquire severe blood pressure problems that got progressively worse the more Defendants tried to make Plaintiffs believe Defendants were right without following the due course of law (Deposition of Bettie L. Hamilton)

(b) that Defendants' have conspired to attempt to forcefully and illegally dissociate Plaintiffs from Morris County

6. that the Blacks in Morris County, and, in particular, the Hamiltons due to her husbands special involvement in the community, could not get a fair trial or resolution of issues in Morris or Titus Counties and in their situation, especially since they had bucked the people in power on the current issue over the last ten years when others went along with it (Deposition of Bettie L. Hamilton)

7. that the two Counties (Morris/Titus) had conspired to win against

the Hamilton's at all cost as evidenced by the fraudulent survey map by Dougherty (Deposition of Bettie L. Hamilton)

8. that the Morris and Titus officials behind this ten year ordeal are responsible for her husbands' death (Deposition of Bettie L. Hamilton)

9. that, if their being dropped from the tax rolls of Morris County based on the "so called" recognized and established Boundary line had been legal and official at some point during the ten (10) year period, this case would not have been necessary or brought (Deposition of Bettie L. Hamilton)

10. that the people in government were picking on her and her husband because they were Black and they could get away with it since Blacks have no representation (Deposition of Bettie L. Hamilton)

11. that since her husband's death four days after his depositions, that she has found his diary of notes that show how much

the injustice had consumed him (Deposition of Bettie L. Hamilton)

GENERAL LAND OFFICE FILE DOCUMENTS IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

A. On March 23, 1875, at a meeting of the Board of Commmissioners appointed by the 14th Legislature of the State of Texas to organize the County of Morris, it was "ordered" that James C. Henderson be employed to survey the lines of Morris County and that one of the Commissioners attend in making that survey (Plaintiffs' General Land Office File, Exhibit "A", p. 1)

B. On April 11, 1875, Surveyor James C. Henderson rendered his his survey to the Board of Commissioners appointed to organize Morris County which Board of Commissioners approved that survey (Plaintiffs' General Land Office File, Exhibit "A", pp. 1-3)

C. On February 15, 1890, the Court felt that the "WESTERN" Boundary of the County of Morris was not "sufficiently definite and well defined" and Morris County Surveyor W. S. CONNOR was appointed and instructed and directed that in surveying and establishing the lines and corners of the Western Boundary in the manner prescribed by an Act of the Legislature approved April 22, 1879. W. S. Connor was further instructed and directed that he "shall be controlled and governed by the boundaries of Morris County as stated in the Act of March 13, 1875". The "purpose of the survey" was to ascertain the point counterplated as being "the nine mile post due East of Mt. Pleasant" as stated in the Act of 1875 (Plaintiffs' General Land Office File, Exhibit "A", pp. 4-9)

D. By letter dated September 20, 1890, to Mr. Richard M. Hall in the General Land Office in Austin, Texas, J. C. TURNER, County Surveyor4 of Titus County, Texas, informed

that "the surveyor from Morris County and [himself], began from center of [Mt. Pleasant] Courthouse ... and ran due east 9 miles which carried [them] 250 vrs. [or 694.4 feet] East of line claimed by Morris County. We then ran due North 14 miles to 'Sulphur', in doing so, Titus County gets a strip from Morris County. They have forbidden their surveyor to go any further with the line and now claim that they (the Commissioners) only instructed him to resurvey the old line and ascertain the amount of land belonging to each County. The line which they claim never had a mile post on it or any indication of a line and all parties which have been on the present line run by us to Sulphur will testify that it is not a straight line, but a very crooked one and that they never set a compass for miles on [the] North end, we have run a correct line so far." Turner was "instructed by [Titus] County Judge Evans to

ask [Mr. Hall] how to proceed further. ... . Their 'OX is gored', Mr. Hall and we hope you will order this County to continue their survey." (Plaintiffs' General Land Office File, Exhibit "B", pp. 1)

E. NOTE: The response at the top of page one (1) of Plaintiffs' General Land Office File, Exhibit "B" states that " If a line has been once run and adopted by both counties, that line, according to decision of Supreme Court, cannot be changed, even if found to be erroneous. ..."

F. On March 24, 1891, the Commissioner - General Land Office sent a letter to the Texas Attorney General's Office in Austin, Texas setting forth the facts concerning the Southern Boundary dispute disclosed in Titus County Surveyor J. C. Turner's September 20, 1890, letter in Paragraph D., above. By letter dated March 25, 1891, R. L. Henry, Office of Assistant Attorney General, rendered an opinion to the Commissioner -

General Land Office which opinion is Plaintiffs' General Land Office File, Exhibit "C" and which concludes **"the original line (surveyed in 1875) is the established line".**

EXHIBITS TO BE INTRODUCED AT TRIAL

(Additional Exhibits in Support of Plaintiffs' Response to Defendants' Motion for Summary Judgment)

1. February 3, 1984 Letter to Verine D. Hamilton from United States Department of Agriculture

2. February 17, 1984 Letter to U.S.D.A. CHendley pervisor Robert C.from Plaintiffs' Attorney James L. Clark concerning the taxes on the Pearl Hamilton Estate

3. March 23, 1983 Letter from Plaintiffs' Attorney Harold A. Nix to Edwin R. York, Jr., Titus County Delinquent Tax Attorney concerning George Hamilton

4. January 19, 1982 Letter from Harold Nix to George Hamilton concerning the State's

Attorney's request to Titus County to remove Plaintiff from Titus County Tax roll

5. January 11, 1982 Letter from Phyllis J. Tyler, State of Texas Attorney concerning a delinquent tax suit against Plaintiffs in error

6. Attorney General Opinion dated August 31, 1939 to Alton T. Freeman, County Attorney, Gaines County, Texas and numbered O-1125

7. Citation-Delinquent Tax Suit to: George C. Hamilton, Shady Grove, Titus County, Texas issued August 10, 1981

8. Southwest Title Insurance Company Mortgagee's Information Letter dated November 23, 1971 to: Mt. Pleasant Savings & Loan, Mt. Pleasant, Texas concerning George W. Hamilton and Bettie Hamilton

9. Defendant Morris County's Original Answer in Civil Cause No. 13, 711 in the District Court of Morris County, Texas wherein the same attorney that rendered

Plaintiffs' title opinion that their land was in Morris County, O. G. Stanley, represents Morris County against Plaintiffs

10. Plaintiff George Hamilton's Attendance Records by Pay Periods for 1985, 1984, 1983, 1982, 1981 and 1980 with comments

11. Affidavit executed April 22, 1986, by Dr. Buddy L. Smith concerning medical records of George W. Hamilton and Bettie L. Hamilton

12. A TEXAS PORTRAIT: EAST TEXAS by Anita Creamer George Hamilton is pictured on page 59 and has a green arrow pointing to him. The article gives a background on the Cason community where the Hamiltons live. George Washington Hamilton's Records, Notes, Diaries, Opinions, etc.

13. Certificate of Death of George Washington Hamilton who died February 18, 1986, four days after the February 13 and 14 Depositions from the same cause as his mother's death, Myocardial Infarction.

AFFIDAVITS IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

STATE OF TEXAS)
)
COUNTY OF MORRIS)

AFFIDAVIT OF BETTIE L. HAMILTON

BEFORE ME, the undersigned authority, personally appeared BETTIE L. HAMILTON, who being by me duly sworn, deposed and said:

1. My name is BETTIE L. HAMILTON. I am over 18 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts stated in it;

2. That Billy J. Thompson, Marvin Traylor, Sammie L. Spraglin, and Ethel Smith, among others, live, according to Defendants' Dougherty Exhibit 4, in Titus County and their location is exhibited by a box on that Exhibit 4, which is attached to their respective affidavits submitted in support of my

testimony and Plaintiffs' contentions;

3. That me and my husband were politically active in Cason, Morris County, Texas;

4. That since events leading to this lawsuit, my husband had become consumed and mentally affected in addition to being physically affected based on his preoccupation to resolve the discrimination against us in resolving the taxable situs issue and to vindicate us from the discriminatory treatment based on our race;

5. That my husband dealt with the discriminatory treatment relative to the boundary problem day and night writing notes, opinions, diaries, and reasearching the law. Our relationship substantially suffered and he could not be as political as he wanted to be with the issue of where we lived pending;

6. That, in particular, the tension of trying to remain citizens of Morris County where they grew up, had friends (white and

Black), where my husband served on the Daingerfield Independent School District, and where my husband was trying to organize the Cason community for greater political power where people knew him, where we have exercised all citizenship rights since birth, where we voluntarily chose and built our home, caused both to acquire severe blood pressure problems that got progressively worse the more Defendants tried to make us believe we were not right about our domicile being in Morris County without following the due course of law and equal rights to our white neighbors;

7. That Defendants' have conspired to attempt to forcefully and illegally dissociate us from Morris County based on our race and lack of political clout in county government;

8. That the Blacks in Morris County, and, in particular, the Hamiltons due to my husbands special involvement in the community,

cannot get a fair trial or resolution of issues in Morris or Titus Counties and in our situation, especially since we have bucked the people in power on the current issue over the last ten years when others went along with it;

9. That the two Counties (Morris/Titus) have conspired to win against us Hamiltons at all cost as evidenced by the fraudulent survey map by Dougherty.

10. That the Morris and Titus officials behind this ten year ordeal are responsible for violating my husband and my civil rights and my husband's death;

11. That, if our being dropped from the tax rolls of Morris County based on the "so called" recognized and established Boundary line had been equally applied with due legal and official action at some point during the ten (10) year ordeal, this case would not have been necessary nor brought;

12. That the people in government were and are picking on me and my husband because we are Black and they feel from past conditions and history they can get away with it by sticking together and since we Blacks no political, judicial or other representation;

13. That my husband's death four days after his depositions, I found his diary of notes that show how much the racial injustice had consumed him.

FURTHER, THE AFFIANT SAYETH NOT.

Signed: Bettie L. Hamilton

BETTIE L. HAMILTON

SUBSCRIBED AND SWORN TO BEFORE ME on the 14th day of MAY, 1986, to certify which witness my hand and official seal.

EVELYN CONNER HICKS
NOTARY PUBLIC in and for
DALLAS County, Texas

STATE OF TEXAS)
)
COUNTY OF MORRIS)

AFFIDAVIT OF WARREN HARDING HAMILTON

BEFORE ME, the undersigned authority, personally appeared WARREN HARDING HAMILTON, who being by me duly sworn, deposed and said:

1. My name is WARRIN HARDING HAMILTON. I am over 18 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts stated in it.

2. My brother, George Hamilton, always had this case and the events leading to this case on his mind. He talked about our government's fraud with that Tobin Line and the inability of us Blacks to live in peace like our white neighbors. Momma (Pearl Hamilton) was the same way in that it worried her all the time as well even though she gave in before she die of the same thing that George

died of, a heart attack brought on by the inability to resolve our problems based on our race and lack of representation in government. Every since this case about in 1973 or 1974 my brother's health deteriorated because of the unlawful acts of our local government.

3. As long as I can remember and as long as I have been a citizen of Morris County, there has been no such thing as a Tobin Line to tax us.

4. The individual, B. J. Skipper, Pat Beck, and all the attorneys for the County and Federal Government, and the attorney who rendered title opinion, especially R. G. Dougherty, have perpetrated a fraud on the county and the people by presenting Defendants' Exhibit 4.

5. The morning of my brother's death, he gave me a briefing on the fraud which he considered as the last straw and as the

beginning of a whole new case because our government was beginning to do anything to win against our right analysis, including manufacture evidence. What was killing him even more was the fact that our county, Morris, conspired with none citizens to defeat us citizens of our citizenship rights.

FURTHER, AFFIANT SAYETH NOT.

Signed: Warren Harding Hamilton
WARREN HARDING HAMILTON

SUBSCRIBED AND SWORN TO BEFORE ME on the 14th day of May, 1986 to certify which witness my hand and official seal.

EVELYN CONNER HICKS
NOTARY PUBLIC in and for
DALLAS County, Texas

ARGUMENTS IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGEMENT

Statute of Limitations

Statute of Limitations are statutes of repose, affording Plaintiffs what the legislature deems a reasonable time to present their claims. United States vs. Kubrick, 444 U.S. 111, 117, (1979). Limitations apply to protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise. Id. None of those elements affecting the Defendants' ability to defend are present here. (Entire Record). It was not until sometime in December, 1984, at the earliest that the Hamiltons discovered the legal implication of the facts essential to their civil rights case. It was then that R. G. Dougherty performed the fraudulent survey and offered same pursuant to the two Counties' conspiracy to win the unequal taxa-

tion issue against Plaintiffs at all cost based on Plaintiffs' race. That Plaintiffs' civil rights were abridged in fact was unknowable until the civil rights abridgments manifested themselves with the R. G. Dougherty Survey and "TOBIN LINE" explanation for unequal application and administration of Morris and Titus Counties' taxing policies. Id. at 122. Further, the facts about causation of Plaintiffs civil rights injury has been the control of the Defendants or at least very difficult to obtain. Plaintiffs felt that the lethargic response to resolving the citizenship/taxation issues were based on the indifference toward his race, but it was not until the conspiracy producing the unequal application of the "TOBIN LINE" that Plaintiffs were not at the mercy of Defendants and did Plaintiffs seek advice concerning Federal civil rights in the legal community. Id. at 122-23.

Defendants entirely missed the point in Plaintiffs . The issue is when Plaintiffs possessed sufficient facts about the harm done to their Federal rights and the cause of their injury and can protect themselves by seeking advice concerning those violations. United States vs. Kubrick, 444 U.S. at 122-124.

Discrimination Claim Supported

Plaintiffs have totally met their burden of proving intentional discrimination. The Defendants admitted application of the "TOBIN LINE" to only Blacks and, in particular, Plaintiffs belies any claims that Plaintiffs were not discriminated against. Further, Defendants have: 1. Conspired to present fraudulent documentary evidence and expert testimony for the sole purpose of discriminating against Plaintiffs and their race (Entire record); 2. Intentionally failed to prosecute a boundary determination

in State Courts knowing full well such a prosecution is illegal under the facts, circumstances and overwhelming State law; 3. Controlled all the conditions based on a "buddy-buddy system" and circumstances prior to Plaintiffs Federal civil rights action which action has given the Plaintiffs leverage; 4. Been the government and its august resources against a politically unrepresented/underrepresented group of Plaintiffs that have historically suffered racially discriminatory treatment; 5. Intentionally performed in a bad-faith manner considering the facts and circumstances surrounding this case based on Plaintiffs' race; and 6. Absolutely no explanation as to why Plaintiffs and other Blacks are discriminatorily excluded from Morris County citizenship and the white citizens do not suffer this "TOBIN LINE" burden.

Exhaustion of State Remedies

The law does not require Plaintiffs to dofraud, ilous act. Considering the-conspiracy and bad faith at the local levels of government for Morris and Titus Counties for over ten years, the location of land under review, Plaintiffs have no substantive opportunity for redress at the administrative and judiciary local levels in Morris and Titus County and thus have no adequate or available remedy. Huffman vs. Pursue, Ltd., 420 U.S. 592, rehearing denied 421 U.S.971 (1975); Beale v. Blount, 461 F.2d 1133 (5th Cir. 1972)(no requirement to exhaust available state administrative remedies before bringing federal case no matter what state administrative avenues for relief are open). Of course, no one can doubt that after ten years, there is a ripeness to the extent that there was definitive administrative or institutional determinations before

this action arose (see deposition exhibits for George Hamilton determining his tax situs). Accord, Ehlers v. City of Decatur, Georgia, 614 F.2d 54 (5th Cir. 1980); Watson v. Briscoe, 554 F.2d 650 (5th Cir. 1977).

RECOGNITION OF COMMON BOUNDARIES BY COUNTIES

Defendants cite Yoakum County v. Gaines authority 3 S.W.2d 393 (1942) asfor some "unproven" agreement between Defendant Counties, for purposes of assessing and collecting taxes, to recognize the county line as fixed or shown on the Tobin Map. The Yoakum County case is distinguishable in that the issue involved a boundary line "not sufficiently definite and well defined and established as required by law." Here, however, the boundary line was marked on the ground in 1875 pursuant to lawful commission and appointment by JAMES C. HENDERSON ,

Morris County Surveyor (Plaintiffs' General Land Office File, Exhibit "A") and such line has been established and definitely marked, known and recognized by the General Land Office and all other parties involved since 1875 (Plaintiffs' General Land Office File, Exhibit "B" and "C"). Therefore, under Yoakum County, the line established by Henderson in 1875 must be accepted. Yoakum County v. Gaines County, 163 S.W.2d at 396. Further, basic facts to Plaintiffs' complaint arising from the ostensible evidence show fraud and bad faith on the part of both Morris and Titus Counties in attempting to illegally establish a different line (ENTIRE RECORD) and through the alleged agreement that has no life other than in the minds of the Defendants herein and which agreement does not have the force of orders from the respective Governing bodies even though those bodies cannot be unaware as to what has been going on over the last ten years. Id.;

Accord, Gaines County v. Terry County, 152 S.W.2d 509 (Tex. Civ. App. - El Paso 1941, rehearing denied)(where county boundary line has been established, recognized and adopted by the interested ocunties and the commissioner of the general land office though different from that defined by the act creating the counties may be validated and once done the boundary becomes a permanent fixed boundary and may not be subsequently changed). Therefore, Titus and Morris Counties cannot lawfully agree (especially informally) to change "SHADY GROVE ROAD" as the boundary between the two counties just to allow tTitus County to tax all Blacks, an particularly the Hamiltons, without taxing all citizens in the same manner equally and by due course of law.

WHEREFORE, PREMISES CONSIDERED, examinindocuments enticated conveyancing(deed, deeds of trust, title opinions by Defendants'

agents, etc.), affidavits by Cason, Morris County, Texas residents, the lack of a formal procedure by top county officials and the tremendous fraud perpetrated on this Court by the insignificant " TOBIN LINE", Defendants Motions for Summary Judgment should be, in all respects, denied, and Plaintiffs should be allowed to move to the merits of their civil rights case.

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME the undersigned Notary Public Donald day personally appearedW. Hicks, Sr., who being duly sworn by me and place upon his oath deposed and said that he is the attorney of record for Plaintiffs in the above styled and numbered cause and he has read the above and foregoing Plaintiffs' Response to

Defendants' Motions for Summary Judgment and that every statement contained therein is within his personal knowledge true and correct.

Signed: Donald W. Hicks, Sr.
DONALD W. HICKS, SR.

SUBSCRIBED AND SWORN TO BEFORE ME on the 12th day of May, 1986, to certify which witness my hand and official seal.

EVELYN CONNER HICKS
NOTARY PUBLIC in and for
DALLAS County, Texas

Attorney General's Office

(SEAL)

C. A. CULBERSON, ATTORNEY-GENERAL

R. H. HARISON, ASSISTANT ATTORNEY-GENERAL

the Court of Appeals

R. L. HENRY, OFFICE ADMINISTRATORS

FRANK ANDREWS,

Austin, March 23, 1891.

Hon. W. L. McGaughey,

Commissioner General Land Office.

Dear Sir:-

Your letter of March 24th is received. You say: "The Legislature of 1875 created the county of Morris and provided for its survey and organization, the terms of wh.ch you will see by reference to the acts for said year. The commissioners appointed by said Act met in accordance with the terms of the herein mentioned Act and employed one J. C. Henderson to survey the lines of said Morris County. The survey was made according

to the Act creating the before mentioned county, in evidence of which the surveyor's certificate is attached. The lines thus run were not posted, but they were sufficiently marked as not to be questioned where they they were located and have been recognized for all purposes of jurisdiction, revenue and taxation for fifteen years, nor has there been any conflict as to the location of those lines, nor is there any difference now as to location of these optional lines; but insomuch as the tracts of land through which the Western boundary line of Morris County (which is the Eastern boundary of Titus County) ran, had never been surveyed and distances given from corners of surveys to said original line, Morris County desired that this be done, so she passed an order last year (1890) requiring her surveyor to make this survey, and at the same time notified Titus County of the intention and asked her consent and cooperation.

Accordingly the surveyors of Morris and Titus Counties met and began to run a line from the Court House of Titus County (beginning at the same place as the original surveyor) towards Morris County and at nine miles established the initial point; then from this point they began a new line between the counties of Morris and Titus. When Morris County heard of this action she at once convened here commissioners' court and called her surveyor from the field (who by this time had reached the terminus on Sulphur Fork of Red River) by virtue of his failing to comply with the instructions from his county, besides doing what the commissioners' court of Morris County considered it had no power to do, i.e. order the establishment of a new county line when the original one was sufficiently definite - See 65 Texas Jones vs. Powers. But instead of relinquishing or discontinuing the work the surveyor of Titus County returned to the initial point established by the surveyor

of Morris County and himself and from this point continued and completed the new line South to Cypress which differs from the original line as the field notes show, which are now on file in the General LandOffice(sic). With these statements as facts; in your opinion, is the original line or the new line the legal and valid line separating the two counties?"

With the understanding that the above are the facts, all the facts and the undisputed and exact facts, I should say that the original line (surveyed in 1875) is the established line. If the last survey was not intended to be made and was not made under Arts. 686 et sequa, and those articles were not followed such survey would not be regular.

It seems that under the uncontroverted facts, as you state them, the case of Jones v. Powers 65 Tex. is absolutely decisive of this case.

Very respectfully,

R. L. HENRY (SIGNED)

Office Asst. Atty. Genl.

A-140

O-1125 TO: Alton T. Freeman, County Attorney,
Gaines County
DATE: August 31, 1939

After the establishment by survey in 1900 of a common boundary line between counties which was surveyed, marked and established as the boundary line and "recognized as the true line" until 1935 by all parties concerned, the commisioners' court of one of such counties cannot (nor call all together by joint agreement) ratify the result of another and subsequent survey in an attempt to "establish a line which had never been established," and thereby change the boundary lines. Such action of the commissioners' court is null and void. Arts. 1582-1590, 1606, R.C.S.: Sec. 1, Art. IX, Constitution of Texas; Pecos County v. Brewster County, 250 S.W. 310. Nor by such action of the commissioners' court is a county estopped to deny the validity of the

last attempted survey. Blackburn v. Delta County, 107 S.W. 80.

JERRY L. CHAMBLISS, P. O. Box 706
Tax Assessor-Collector Phone (214) 645-2446

EXHIBIT 1

MORRIS COUNTY
500 Broadnax
Daingerfield, Texas 75638

September 14, 1981

FROM: TAX RECORDS OF MORRIS COUNTY

TAX PAYER: GEORGE HAMILTON

DESCRIPTION: WILLIAM WHITE SVY.

ABSTRACT: 313

ACREAGE: ONE HALF (.50)

YEAR:	DATE PAID:	RECEIPT NUMBER:
1963	JAN. 24, 1964	1869
1964	MAY 31, 1971	RED. REC. #77874
1965	MAY 31, 1971	REC. REC. #77874
1966	DEC. 20, 1966	1977
1967	JAN. 5, 1968	2026
1968	MAR. 5, 1969	2029
1969	MAY 31, 1971	RED. REC. #77874
1970	MAY 31, 1971	2092
1971	DEC. 6, 1971	2133
1972	JAN. 1, 1973	2155
1973	FEB. 28, 1974	2266
1974	APR. 30, 1975	2375
1975	DEC. 9, 1976	RED. REC. #17148
1976	DEC. 9, 1976	2477
1977	DEC. 30, 1977	2654
1978	NOV. 1, 1978	2815
1979	NOV. 11, 1979	2968
1980	OCT. 30, 1980	2727

I, Jerry L. Chambliss, Assessor and Collector of Taxes for Morris County, do hereby certify that I have examined the tax records of my office and, insofar as I was

able to ascertain from the records of this office, the above statement is true and correct.

(Signed) Jerry L. Chambliss

Jerry L. Chambliss
Tax Assessor-Collector
Morris County

EXHIBIT 2

STATE SEAL
Secretary of State's Office
Election Division
1-800-252-VOTE

JERRY CHAMBLISS
TAX ASSESSOR COLL
DAINGERFIELD TX 75638

214-645-2446
MORRIS
Cert. No. 00002135 Sex: M
Date of Birth: 12-17-1931
Prec. No. 0102
Valid from 03-01-86
Thru
02-29-88

HAMILTON GEORGE W
BOX 292
CASON TX 75636

(Signed) George W. Hamilton

Name and Mailing Address
HAMILTON GEORGE W
BOX 292
CASON TX 75636

STATE SEAL
Secretary of State's Office
Election Division
1-800-252-VOTE

JERRY CHAMBLISS
TAX ASSESSOR COLL
DAINGERFIELD TX 75638

214-645-2446
MORRIS
Cert. No. 00002133 Sex: F
Date of Birth: 12-27-1935
Prec. No. 0102
Valid from 03-01-86
Thru
02-29-88

HAMILTON BETTIE L
BOX 292
CASON TX 75636

(Signed) Bettie L. Hamilton

Name and Mailing Address
HAMILTON BETTIE L
BOX 292
CASON TX 75636

JERRY L. CHAMBLISS
TAX ASSESSOR-COLLECTOR
MORRIS COUNTY
DAINGERFIELD, TEXAS
75638

P. O. Box 706 Phone 214-645-2046

STATE OF TEXAS, COUNTY OF MORRIS

PRECINCT 0102 MARCH 1, 1984

CERT #	NAME	DATE OF BIRTH	ADDRESS	CITY	
002133	HAMILTON, BETTIE L.	12-27-35	BOX 292	CASON	75636
002135	HAMILTON, GEORGE W.	12-17-31	BOX 292	CASON	75636

STATE OF TEXAS, COUNTY OF MORRIS

PRECINCT 0102 MARCH 1, 1985

CERT #	NAME	DATE OF BIRTH	ADDRESS	CITY	
002133	HAMILTON, BETTIE L.	12-27-35	BOX 292	CASON	75636
002135	HAMILTON, GEORGE W.	12-17-31	BOX 292	CASON	75636

AFFIDAVIT

My name is Ethel Smith, I am over 18 years of age and there is no legal impediment to my making this affidavit. It is the truth, it is entirely voluntary, and I fully understand that I do not have to make this affidavit. I have not been offered or accepted any bribe or any benefit; no one has threatened or coerced me in any way with respect to withholding testimony or for the purpose of causing me to take or withhold action, and I understand that to do such would be illegal.

I, Ethel Smith, am a resident of Cason, Morris County, Texas and competent to make this statement.

The location of my residence is marked by my initials on a copy of a Surveyor's Plat dated December 14, 1986 and marked "Dougherty DX-4" which plat shows the boundary line between Morris and Titus Counties in the vicinity of Cason, Texas.

My deeds reflect that I reside in Morris County, Texas. The deeds to the property in which I live reflect that I am a citizen of Morris County, Texas. I have lived in Morris County since Oct. 76 years.

I vote in Morris County. Morris County provides county services to me. I am familiar with the area depicted by said survey plat. I believe and have understood over the years that Shady Grove Road marks a division line between Titus and Morris Counties.

(SIGNED)
ETHEL SMITH
AFFIANT

AFFIDAVIT

My name is Sammie L. Sprogen, I am over 18 years of age and there is no legal impediment to my making this affidavit. It is the truth, it is entirely voluntary, and I fully understand that I do not have to make this affidavit. I have not been offered or accepted any bribe or any benefit; no one has threatened or coerced me in any way with respect to withholding testimony or for the purpose of causing me to take or withhold action, and I understand that to do such would be illegal.

I, Sammie L. Sprogen, am a resident of Cason, Morris County, Texas and competent to make this statement.

The location of my residence is marked by my initials on a copy of a Surveyor's Plat dated December 14, 1986 and marked "Dougherty DX-4" which plat shows the boundary line between Morris and Titus Counties in the vicinity of Cason, Texas.

My deeds reflect that I reside in Morris County, Texas. The deeds to the property in which I live reflect that I am a citizen of Morris County, Texas. I have lived in Morris County life years.

I vote in Morris County. Morris County provides county services to me. I am familiar with the area depicted by said survey plat. I believe and have understood over the years that Shady Grove Road marks a division line between Titus and Morris Counties.

(SIGNED)
SAMMIE L. SPROGEN
AFFIANT

AFFIDAVIT

My name is Billy J. Thompson, I am over 18 years of age and there is no legal impediment to my making this affidavit. It is the truth, it is entirely voluntary, and I fully understand that I do not have to make this affidavit. I have not been offered or accepted any bribe or any benefit; no one has threatened or coerced me in any way with respect to withholding testimony or for the purpose of causing me to take or withhold action, and I understand that to do such would be illegal.

I, Billy J. Thompson, am a resident of Cason, Morris County, Texas and competent to make this statement.

The location of my residence is marked by my initials on a copy of a Surveyor's Plat dated December 14, 1986 and marked "Dougherty DX-4" which plat shows the boundary line between Morris and Titus Counties in the vicinity of Cason, Texas.

My deeds reflect that I reside in Morris County, Texas. The deeds to the property in which I live reflect that I am a citizen of Morris County, Texas. I have lived in Morris County _____ years.

I vote in Morris County. Morris County provides county services to me. I am familiar with the area depicted by said survey plat. I believe and have understood over the years that Shady Grove Road marks a division line between Titus and Morris Counties.

(SIGNED)
BILLY J. THOMPSON
AFFIANT

AFFIDAVIT

My name is Marvin Traylor, I am over 18 years of age and there is no legal impediment to my making this affidavit. It is the truth, it is entirely voluntary, and I fully understand that I do not have to make this affidavit. I have not been offered or accepted any bribe or any benefit; no one has threatened or coerced me in any way with respect to withholding testimony or for the purpose of causing me to take or withhold action, and I understand that to do such would be illegal.

I, Marvin Traylor, am a resident of Cason, Morris County, Texas and competent to make this statement.

The location of my residence is marked by my initials on a copy of a Surveyor's Plat dated December 14, 1986 and marked "Dougherty DX-4" which plat shows the boundary line between Morris and Titus Counties in the vicinity of Cason, Texas.

My deeds reflect that I reside in Morris County, Texas. The deeds to the property in which I live reflect that I am a citizen of Morris County, Texas. I have lived in Morris County 31 years.

I vote in Morris County. Morris County provides county services to me. I am familiar with the area depicted by said survey plat. I believe and have understood over the years that Shady Grove Road marks a division line between Titus and Morris Counties.

(SIGNED)
MARVIN TRAYLOR
AFFIANT

Form FHA 427-10
(Rev. 3-26-70)

U.S. DEPARTMENT OF AGRICULTURE
Farmers Home Administration
FINAL TITLE OPINION

Pearl Hamilton, a single woman
Morris, Texas

I. I have examined title to the property described in the security instrument described in paragraph II-B below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form FHA 427-9, or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to September 8 1972, at 3:15 p.m. o'clock (including the time of filing the current security instrument).

II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:

A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in Pearl Hamilton, a single woman as individual (Joint tenants, tenants by the entirety, etc., as required or permitted by FHA)

B. The United States of America holds a valid First Mortgage lien on said property as required by the Farmers Home Administration, which lien was filed for record on September 8, 1972, at 3:15 P.M. o'clock and is recorded in Vol. 29, page 271, Deed

of Trust Records of Morris County, Texas.

C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Farmers Home Administration attached hereto or to my Preliminary Title Opinion.

III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the County Supervisor at the time of loan closing):

none

IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State and local taxes, inlcuding county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits in State and Federal courts, (e) leases, easements, and mineral reservations, (f) legally inade-

quate property descriptions, and (g) conveyances of any part of or interest in the property to parties outside the chain of title.

V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the Farmers Home Administration, and I assume liability to each hereunder.

September 20, 1972
(Signed) O. G. STANLEY
O. G. STANLEY
Attorney at Law
P. O. Box 148
Lone Star, Texas 75538

MORRIS COUNTY

JERRY PRATT

County Judge

500 Broadnax

DAINGERFIELD, TEXAS 75638

March 27, 1980

Department Cheif

Voting Section

Civil Rights Division

Department of Justice

Washington, D. C. 20530

Dear Sirs: RE: DSK: JMC:ZIF:rjs

DJ 166-012-3 C7787

Additional information requested by Ms. Zaida Friedman by phone, March 26, 1980.

Number of registered voters and estimated polution by race in each proposed voting precinct.

Continued next page

AREAS OF MINORITY CONCENTRATIONS

NUMBER AND PERCENTAGE OF LEGISTEED VOTERS BY RACE IN EACH VOTING PERCINCT. THE PERCENTAGE OF REGISTERED VOTERS WOULD BE APPROXIMATELY THE SAME AS THE PERCENTAGE OF THE POPULATION.

Anglo		Black		Spanish	Total
Precinct 101					
1529	(95%)	75	(5%)	7	1611
Precinct 102					
95	(22%)	333	(78%)	0	428
Precinct 201					
267	(95%)	15	(5%)	0	282
Precinct 202					
506	(98%)	8	(2%)	0	514
Precinct 203					
1089	(99%)	13	(1%)	2	1104

Registered voters:

Anglo	Black	Sp. Heritage	Total
Voting precinct #101			
1529	75	7	1611
Voting precinct #102			
95	333	0	428
Commissioner Precinct #1			
1624	408	7	2039

*See Note #1

Voting precinct #201			
267	15	0	282
Voting precinct #202			
506	8	0	514
Voting precinct #203			
1089	13	2	1104
Commissioner Precinct #2			
1862	36	2	1900

Anglo		Black		Spanish	Total
Precinct 301					
231	(56%)	181	(44%)	0	412
Precinct 302					
6	(11%)	49	(89%)	0	55
Precinct 303					
965	(76%)	302	(23%)	2	1269
Precinct 401					
506	(80%)	121	(20%)	0	627
Precinct 402					
142	(89%)	18	(11%)	0	160
Precinct 403					
1032	(75)	339	(25%)	0	1371
6368		1454		11	7833

Registered Voters:

Anglo	Black	Sp. Heritage	Total
Voting precinct #301			
231	181	0	412
Voting precinct #302			
6	49	0	55
Voting precinct #303			
965	302	2	1269
Commissioner Precinct #3			
1202	532	2	1136
*See Note #3			
Voting precinct #401			
506	121	0	627
Voting precinct #402			
142	18	0	160
Voting precinct #403			
1032	339	0	1371
Commissioner precinct #4			
1680	478	0	2158
*See Note #4			

DONALD R. SMITH, M.D. BUDDY L. SMITH, M.D.
SMITH CLINIC MEDICAL ASSOCIATION
1492 LINDA DRIVE PHONE 945-2246
DAINGERFIELD, TEXAS 75638

March 19, 1985

Joe Skipper

Sheriff-Morris County
Daingerfield, Texas 75638
RE: Bettie L. Hamilton
Dear Mr. Skipper,
The above mentioned woman should be excused from jury duty due to medical reasons.

If If can be of any further service please let me know.

Sincerely,

Buddy L. Smith, M.D.
BLS/mh

AMENDMENT XIII[1865]

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

AMENDMENT XIV[1968]

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AMENDMENT XV[1870]

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

42 U.S.C. § 1981.

"Equal rights under the law. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1982.

"Property rights of citizens. All citizens shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

42 § 1983

Every person who, under color of any statue, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1985(3).

Conspiracy to interfere with civil rights. . . . If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of laws, or of equal privileges and immunities under the laws; . . . the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

Rule 59. New Trials; Amendment of Judgments

(a) Grounds

A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reaons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in thee courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for motion

A motion for a new trial shall be served not later than 10 days after the entry of the

judgment.

(c) Time for serving affidavits

When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On initiative of court

Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be hear on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(e) Motion to alter or amend a judgment

A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Feb. 28, 1966, eff. July 1, 1966)

Rule 60. Relief From Judgment or Order

(a) Clerical mistakes

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise,

or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or othe rmisconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to

entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C. § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram nobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949.)